

Job No. 3310750

1	CAUSE NO. 18-08-0777-CVA	
2	SAN MIGUEL ELECTRIC	) IN THE DISTRICT COURT OF
	COOPERATIVE, INC.,	)
3	Plaintiff,	)
		) ATASCOSA COUNTY, TEXAS
4	VS.	)
		)
5	A.M. PEELER RANCH, LLC,	)
	ALONZO M. PEELER, JR.;	)
6	AND BARBARA GENE PEELER,	) 218TH JUDICIAL DISTRICT
		)
7	Defendants	)
	_____	)
8		)
	A.M. PEELER RANCH, LLC;	)
9	ALONZO M. PEELER, JR.;	)
	and BARBARA GENE PEELER,	)
10	Counter-Plaintiffs	)
		)
11	VS.	)
		)
12	AECOM; BRAZOS ELECTRIC	)
	POWER COOPERATIVE, INC.;	)
13	KIEWIT MINING GROUP,	)
	INC.; THE NORTH AMERICAN	)
14	COAL CORPORATION; SAN	)
	MIGUEL ELECTRIC	)
15	COOPERATIVE, INC.; and	)
	SOUTH TEXAS ELECTRIC	)
16	COOPERATIVE, INC.,	)
	Counter-Defendants	)
17	_____	)
		)
18	JASON PEELER,	)
	Intervenor	)
19		)
	VS.	)
20		)
	AECOM; BRAZOS ELECTRIC	)
21	POWER COOPERATIVE, INC.;	)
	KIEWIT MINING GROUP INC.,	)
22	THE NORTH AMERICAN COAL	)
	CORPORATION; SAN MIGUEL	)
23	ELECTRIC COOPERATIVE,	)
	INC.; AND SOUTH TEXAS	)
24	ELECTRIC COOPERATIVE,	)
	INC.,	)
25	Counter-Defendants	)

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ORAL DEPOSITION OF TRAVIS WOOTTON

MAY 13, 2019

VOLUME 1 OF 1

ORAL DEPOSITION OF TRAVIS WOOTTON, produced as a witness at the instance of the Defendants, Counter-Plaintiffs, Intervenor and duly sworn, was taken in the above styled and numbered cause on Monday, May 13, 2019, from 9:34 a.m. to 3:35 p.m., before JANALYN ELKINS, CSR in and for the State of Texas, reported by computerized stenotype machine, at the offices of Guerra & Whittle, 2630 Exposition Boulevard, Suite 102, Austin, Texas, pursuant to the Texas Rules of Civil Procedure and the provisions stated on the record herein.

A P P E A R A N C E S

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ALSO PRESENT:

JAYLA REEVES (Videographer)

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1 (Exhibit Nos. 73-76 were marked.)

2 VIDEOGRAPHER: This is the videotaped  
3 deposition of Travis Wootton. Today's date is May 13,  
4 2019 we're on the record at 9:34 a.m.

5 TRAVIS WOOTTON,  
6 having been duly sworn, testified as follows:

7 EXAMINATION

8 Q. (BY MS. WHITTLE) Good morning, Mr. Wootton.

9 A. Morning.

10 Q. Would you please state and spell your name?

11 A. My name is Travis Wootton, it's spelled  
12 T-R-A-V-I-S, last name is Wootton, W-O-O-T-T-O-N.

13 Q. And what is your address?

14 A. 6113 La Naranja Lane, Austin, Texas 78749.

15 Q. And have you ever had your deposition taken  
16 before?

17 A. No.

18 Q. Well, you've probably heard a little bit about  
19 what to expect today, but essentially this is a  
20 conversation that we have to get on record. So the court  
21 reporter needs to be able to write down all of the words  
22 that we say which means I'm going to do my best not to  
23 speak over you and I'll ask that you do your best to wait  
24 until I finish my question and then answer it.

25 If there are objections from counsel, unless

1     there's an instruction not to answer, you just go forward  
2     with your answer. I may ask on occasion for the basis of  
3     an objection. But that likely won't happen very often.  
4     Just wait until the counsel conversations are finished and  
5     then you can respond.

6             If at any time you don't understand a  
7     question that I've asked, please ask me to clarify. I'm  
8     happy to do so and I want to make sure that you're  
9     answering the question that I've asked and that I  
10    understand your answer. Do you understand all of those  
11    guidelines?

12            A. Yes.

13            Q. Okay. Who is your current employer?

14            A. I'm retired.

15            Q. And where were you employed previously?

16            A. The Railroad Commission of Texas.

17            Q. What years were you employed at the Railroad  
18    Commission?

19            A. From December of 1990 through November of 2018.

20            Q. And who is here with you today?

21            A. Natalie Dubiel is an attorney with the Austin  
22    general counsel with the Railroad Commission and David  
23    Preister with the -- with the attorney general's office.

24            Q. And do you have a written engagement agreement  
25    authorizing these attorneys to be representing you today?

1 A. No.

2 Q. In what capacity are they here?

3 A. In my opinion, it's because the -- the deposition  
4 is related to my employment at the commission.

5 Q. And how did they come to represent you at your  
6 deposition?

7 A. I had a discussion with the attorney -- excuse  
8 me -- the general counsel at the Railroad Commission and  
9 requested representation.

10 Q. And what are the limits of their participation in  
11 this deposition?

12 A. I don't know that.

13 Q. Has anyone explained to you the limits of their  
14 representation or if there are any?

15 MR. PREISTER: Objection, attorney/client  
16 privilege. I instruct the witness not the answer.

17 MS. WHITTLE: Well, I object to your  
18 instruction. I think it's an improper instruction,  
19 especially as we have not established yet that you have an  
20 attorney/client relationship. But we'll move on.

21 Q. (BY MS. WHITTLE) What are the limits of their --  
22 sorry. Neither you nor the State of Texas is a party to  
23 this lawsuit. Do you understand that?

24 A. Pardon? Could you repeat?

25 Q. Yes. Neither you nor the State of Texas is a

1 party to this lawsuit. Do you understand that?

2 A. That's my understanding.

3 Q. And you are not the subject of this lawsuit nor  
4 have you been sued by any party in this lawsuit. Do you  
5 understand that?

6 A. Yes.

7 Q. Have you signed any joint defense agreement with  
8 the state?

9 A. No.

10 Q. Have you entered into any settlement agreement  
11 that allows or requires the state to represent you here?

12 A. Not to my knowledge.

13 Q. Is the attorney general's office representing you  
14 for subjects that might go outside the scope of your  
15 employment with the Railroad Commission?

16 A. No, ma'am.

17 Q. Are you here today testifying as an individual or  
18 on behalf of the State of Texas?

19 A. As I understand, the reason for this deposition  
20 the questions would be related to my employment with the  
21 commission.

22 Q. Have either of the attorneys who are present here  
23 with you today prepared you for today's deposition?

24 A. Yes.

25 Q. And when did that preparation take place?



1 MR. PREISTER: Objection, attorney compliant  
2 privilege. I instruct the witness not to answer.

3 MS. WHITTLE: Mr. Preister, we have the  
4 right to ask when preparation took place. I'm not asking  
5 the subject of the preparation. But we do have the right  
6 to understand the limits of the preparation.

7 Q. (BY MS. WHITTLE) So, sir, when did that  
8 preparation take place?

9 MR. PREISTER: Objection, attorney/client  
10 privilege. I instruct the witness not to answer.

11 Q. (BY MS. WHITTLE) Mr. Wootton, are you following  
12 the instruction of Mr. Preister and not answer my  
13 question?

14 A. Yes, ma'am.

15 Q. Has the state attempted to limit what you are  
16 allowed to say at this deposition in any way?

17 A. No, ma'am.

18 Q. As you understand it, what is the attorney  
19 general office purpose in attending the deposition today?

20 A. To represent me.

21 Q. And as you understand it, what is the office of  
22 general counsel for the Railroad Commission's purpose in  
23 attending the deposition today?

24 A. To represent me.

25 Q. Are you aware that the office of general counsel

1 for the Railroad Commission concurred in the basis for  
2 your termination of employment with the Railroad  
3 Commission?

4 A. I don't know their opinion.

5 Q. So would it impact your view about their  
6 representation if you knew that the Railroad Commission  
7 office of general counsel had concurred in the basis for  
8 your termination?

9 A. No, it would not.

10 Q. Did anyone advise you to retain your own  
11 independent counsel?

12 A. No one specifically, no.

13 Q. Have you retained any counsel?

14 A. I have not.

15 Q. Has anyone told you that the state may have a  
16 conflict of interest in representing you here today?

17 A. No.

18 MS. WHITTLE: So for the record, I object to  
19 the presence of the assistant attorney general, David  
20 Preister and Natalie Dubiel from the Railroad Commission  
21 office of general counsel. State of Texas is not a party  
22 to this lawsuit. Mr. Wootton is a former Railroad  
23 Commission employee who has not been sued. There is no  
24 authority for the attorney general to represent a non  
25 party ex-employee at a deposition. If the Legislature had

1 wished to provide such as service it surely would have  
2 done so by statute and it has not. So, so said.

3 Q. (BY MS. WHITTLE) I would like to go through your  
4 work and educational experience.

5 Mr. Wootton, what university did you attend?

6 A. I attended the University of Texas at Austin.

7 Q. And what was your major?

8 A. I hold a bachelor's degree in geography.

9 Q. And did you have -- so that's -- that's your  
10 degree and your major?

11 A. Yes.

12 Q. Sorry. Okay. What year did you graduate?

13 A. 1990.

14 Q. What other professional training have you had?

15 A. I've had courses offered by the office of surface  
16 mining, which is the federal oversight agency under the  
17 Department of Interior relative to the coal mining  
18 regulatory program. I've attended a couple of other  
19 classes of surveying-related course work, short courses at  
20 Texas A&M as part of my employment. That would be it.

21 Q. Have you had any other professional training in  
22 how to use the various programs you've used at the  
23 Railroad Commission like CAD, for example?

24 A. Nothing beyond the -- the courses that I took or  
25 on-the-job training.

1 Q. Okay. What was your first job out of college?

2 A. It was at the Railroad Commission.

3 Q. And when did you first apply to the Railroad  
4 Commission?

5 A. I don't recall that date.

6 Q. What division did you first apply to?

7 A. I first applied to the oil and gas division.

8 Q. And when was you first hired?

9 A. I started December 1, 1990.

10 Q. And what was that position?

11 A. It was in the mapping department for the oil and  
12 gas division.

13 Q. And what were your responsibilities there?

14 A. Primarily to -- our group was -- was building the  
15 base map for the oil and gas -- the current -- I guess,  
16 the current oil and gas mapping system. We were  
17 digitizing physical information from -- from USGS  
18 quadrangle sheets into the master system.

19 Q. And how long did you have -- hold that position?

20 A. Approximately a year and a half. Middle of 1992.

21 Q. And then what did you -- where did you go?

22 A. I moved to the surface mining division and the  
23 abandoned mine land section.

24 Q. What was the position you held there?

25 A. I -- I took care of various roles. I did some

1 mapping work. I also got involved with site design for  
2 regrading designs and hydraulic and hydrologic designs for  
3 reclaiming the abandoned mine sites.

4 Q. How long did you hold that position?

5 A. Until approximately mid 2001.

6 Q. And then what position did you hold?

7 A. At that point when I left that role, I moved over  
8 to the permitting section in the surface mining division.

9 Q. And what did you do there?

10 A. I conducted permit review.

11 Q. And what were the types of responsibilities you  
12 had doing permit review?

13 A. It would have been reviewing mine plans or  
14 reclamation plans or structure designs.

15 Q. How long did you hold that position?

16 A. I held that position until the latter part, I  
17 don't recall the exact date, but the mid to latter part of  
18 2012.

19 Q. And did you submit the latter part of 2012. And  
20 then what position did you have?

21 A. I was promoted to manager of the applications and  
22 permit section.

23 Q. And what were your responsibilities as manager?

24 A. Oversight of the permitting group.

25 Q. How many people reported to you?

1 A. Approximately 20.

2 Q. And how long did you hold that position?

3 A. I held that position until the latter part of  
4 2016. I don't recall the exact date.

5 Q. And then what position did you hold?

6 A. At that point I was promoted to assistant  
7 director for the division.

8 Q. And as assistant director for the division, what  
9 were your responsibilities?

10 A. I maintained the primary oversight of the  
11 permitting group. I also assumed the role of -- of -- of  
12 filling in for the director if he was out of the office.

13 Q. And how many people reported to you as assistant  
14 director?

15 A. Under the org chart at that time it was direct  
16 reports -- well, I had about five direct reports and two  
17 of those were managers who had, I can't recall, 7 or 8  
18 people under them. So the chain it was probably 25, give  
19 or take.

20 Q. Did you ever apply for the position of director  
21 of the division?

22 A. I did.

23 Q. How many times did you apply for that position?

24 A. Once.

25 Q. And what directors did you serve under?

1           A. I served under Melvin Hodgkiss, John Caudle, and  
2 Denny Kingsley in the surface mine division. I don't  
3 recall the name of the director in the oil and gas  
4 division at the time.

5           Q. And what was your working relationship like with,  
6 is it Melvin Hodgkiss?

7           A. Yes. I would couch it as very good.

8           Q. And did you ever have any disagreements with him?

9           A. Not that I can recall.

10          Q. Did you like his management style?

11          A. Absolutely.

12          Q. Did he ever provide you negative feedback on your  
13 work performance or management of work?

14          A. Not that I recall.

15          Q. And what was your working relationship like with  
16 John Caudle?

17          A. It was very good.

18          Q. Did you ever have any disagreements with him?

19          A. Not that I can recall.

20          Q. Did you like his management style?

21          A. I did.

22          Q. Did he ever provide you any negative feedback on  
23 your work performance or your management style?

24          A. Not that I recall.

25          Q. What was your working relationship like with

1 Denny Kingsley?

2 A. It was good as well.

3 Q. Did you ever have any disagreements with him?

4 A. I don't recall.

5 Q. Did you like his management style?

6 A. I did.

7 Q. Did he ever provide you negative feedback on your  
8 work performance or management style?

9 A. Not that I recall.

10 Q. How would you describe your management style?

11 A. My management style is one of team work. I  
12 believe it's important for people to be provided guidance  
13 and training, to communicate, and to be available to them  
14 if they need assistance.

15 Q. How often did you receive performance  
16 evaluations?

17 A. Commission's practice was annually.

18 Q. Did they follow that practice?

19 A. To the best of my recollection.

20 Q. Did you ever receive a performance evaluation  
21 that warranted development of a plan for improvement?

22 A. No.

23 Q. What did you consider in your specialty at the  
24 division?

25 A. Probably the engineering side.



1 Q. What would you say you were especially good at?

2 A. That's not something I can really answer, I -- I  
3 reviewed a multitude of different types of projects. They  
4 were all different.

5 Q. Well, for example, I read that you were the go-to  
6 guy for understanding the regulations and division's  
7 policies. Would you agree with that statement, that you  
8 are the go-to guy for understanding the regulations?

9 A. I was sought out on a regular basis.

10 Q. Is that something you took pride in understanding  
11 this?

12 A. Absolutely.

13 Q. Did you like working at the Surface Mining  
14 Reclamation Division?

15 A. I thoroughly enjoyed working there.

16 Q. Overall, how many years did you work there?

17 A. In the division?

18 Q. Yes.

19 A. I guess it would have been 26 and a half,  
20 approximately.

21 Q. Did you receive pay raises on a regular basis?

22 A. When budgetary allowances afforded that, yes.

23 Q. Based on your personnel file, the former director  
24 John Caudle tried for many years to get you a raise or  
25 monetary reward. How many years did you go without a

1 raise?

2 A. I don't recall.

3 Q. Was it four years?

4 A. I really don't remember. I -- I was compensated  
5 fairly and when it was available, it was provided to me.

6 Q. So you were never concerned about the lack of  
7 raises or monetary reward?

8 A. I was not.

9 Q. At any point during your tenure at the Railroad  
10 Commission, did you attempt to resign?

11 A. There was one point in -- I don't recall when it  
12 was, I was still in the abandoned mining section and I had  
13 actually pursued a position outside the agency. And I  
14 don't recall whether I had submitted a letter or not, I  
15 may have, and then basically changed my mind and withdrew  
16 the resignation.

17 Q. That was the only time?

18 A. Yes, ma'am.

19 Q. What was your salary at the end of your term at  
20 the Surface Mining Reclamation Division?

21 A. I don't recall exactly.

22 Q. Was it more than \$60,000 a year?

23 A. Yes.

24 Q. Was it more than \$70,000 a year?

25 A. Yes.

1 Q. Was it more than \$80,000 a year?

2 A. Yes.

3 Q. Was it more than \$90,000 a year?

4 A. Yes.

5 Q. Was it more than \$100,000 a year?

6 A. I can't recall if it was. It was probably in  
7 that range. I can't recall exactly.

8 Q. Okay. Did you receive a raise when you became  
9 the assistant director?

10 A. I believe I did.

11 Q. Okay. Was -- was it a significant raise or --

12 A. I don't recall the -- the amount.

13 Q. What awards did you receive during the course of  
14 your employment at the Surface Mining Reclamation  
15 Division?

16 A. Agency awards?

17 Q. Well, let's start with agency awards.

18 A. I was the recipient of the outstanding service  
19 award four times.

20 Q. And what years, do you recall?

21 A. I believe it was 1991, 1993, and then twice in  
22 the early 2000s.

23 Q. What does that award usually mean?

24 A. It's typically, my understanding, I don't know  
25 how they're doing it now. It was for going above and

1 beyond in doing your job and -- and basically being a very  
2 good employee.

3 Q. And what awards did you receive outside of the  
4 agency?

5 A. I can't recall specific awards outside of the  
6 agency.

7 Q. Did you ever receive any awards from industry or  
8 others?

9 A. Not that I recall.

10 Q. Did you ever receive any monetary awards from the  
11 Railroad Commission, a bonus or additional vacation in  
12 order to recognize a job well done?

13 A. I believe I received a bonus once, it could have  
14 been twice, but I -- I believe I received a bonus once.  
15 And there was a practice in place at -- at one point to  
16 where when you received exceeds requirements as a rating,  
17 overall rating on your performance review, you could  
18 receive an administrative -- award of administrative,  
19 basically comp time. And I received that a couple of  
20 times. I don't recall exactly how many.

21 Q. Okay. How was the service mining reclamation  
22 division organized when you were there?

23 A. When I was there, there were -- we had an  
24 administrative staff that was composed of three folks in  
25 the file room and a couple of -- an office manager, an

1 executive assistant to the director and a -- I believe a  
2 couple of admins for -- one primarily served our abandoned  
3 mining group and the inspection enforcement section and  
4 one for the -- the applications and permitting group.

5 The -- basically the business units there  
6 were three -- effectively three groups, there was the  
7 applications and permitting group which was roughly half  
8 the division. There was the abandoned mine land section  
9 that was charged with reclaiming pre-law abandoned mine  
10 sites. I don't recall how many folks were in there. And  
11 then there was our inspection and enforcement section.  
12 Each of those groups had a manager.

13 Q. This is a little bit of a detour, but can you  
14 explain what the differences between the abandoned mine  
15 land section and the permitting section?

16 A. The permitting section is responsible for the  
17 review of permits for active coal mines or coal mines that  
18 were in operation after the Surface Mining Control  
19 Reclamation Act in 1997, which is the federal rule that  
20 governed mining. Any site that was abandoned prior to  
21 inaction of that legislation was covered by the abandoned  
22 mine land program that the companies, active companies pay  
23 in a fee, I don't recall what that is. But they pay in a  
24 fee per ton of coal that provides federal funding for the  
25 reclamation of abandoned mines.

1 Q. So what happens, for example, with a mine like  
2 the Jewitt mine where Westmoreland is bankrupt and not  
3 pursuing reclamation, does that go to the abandoned mine  
4 land section?

5 A. No, ma'am.

6 Q. I'm sorry?

7 A. No, ma'am.

8 Q. Okay. So is it still governed under the permit  
9 section?

10 A. Yes.

11 Q. Who reviewed your job performance during the last  
12 few years you were at the Surface Mining Reclamation  
13 Division?

14 A. It would depend on who my supervisor was.

15 Q. For the last two years who was your supervisor?

16 A. Denny Kingsley, the director.

17 Q. And did he review you performance?

18 A. Yes.

19 Q. And all of the time that you were an assistant  
20 manager of the division would the -- I'm sorry, assistant  
21 director of the division, would the director have been the  
22 one to review your performance?

23 A. Yes.

24 Q. Did you conduct performance evaluations for other  
25 employees?

1 A. I did.

2 Q. Who?

3 A. It would depend on when -- when we're talking  
4 about.

5 Q. Well, in the last two years, who did you perform  
6 evaluations for?

7 A. During my role as assistant director?

8 Q. Yes, sir.

9 A. I conducted performance reviews of the two  
10 managers of the applications and permit section. And I  
11 believe I conducted reviews also for our file room staff  
12 and the administrative assistant assigned to applications  
13 and permits.

14 Q. And then did the managers of the permitting  
15 section conduct performance evaluations for the staff  
16 below them?

17 A. They did.

18 Q. Okay. Did you ever, over the course of your time  
19 at the Railroad Commission, develop a plan for improvement  
20 for any other employee?

21 A. I don't recall that I did.

22 Q. Did you have the authority to fire an employee?

23 A. Yes.

24 Q. Did you have the authority to recommend firing an  
25 employee?

1           A. That would probably be the better option, the  
2 better description.

3           Q. Did you ever do either?

4           A. We pursued termination on one employee that I can  
5 recall.

6           Q. And was that employee terminated?

7           A. I don't recall if they were terminated or  
8 resigned.

9           Q. Okay. As part of your job, did you become  
10 familiar with the regulations governing surface mining and  
11 reclamation in the State of Texas?

12          A. Yes.

13          Q. Would you consider yourself a little bit familiar  
14 with those regulations or very familiar with those  
15 regulations?

16          A. I feel I'm very familiar on an overall -- overall  
17 view.

18          Q. Was having a thorough knowledge and understanding  
19 of the coal mining regulations a requirement of your job?

20          A. I would say it was.

21          Q. I'm going to switch back to something that I  
22 forgot to do. I'd like to hand you what's been marked  
23 Exhibit 73 and have you look at this document for me and  
24 identify it. Have you seen that document before?

25          A. Yes, ma'am.



1 Q. Can you identify that document for me?

2 A. I'm not an attorney. It's titled Notice of  
3 Deposition.

4 Q. Is that the reason you're here today?

5 A. Yes, ma'am.

6 Q. Okay. And then I'd like to show you what's been  
7 marked Exhibit 74?

8 MS. FREEL: What is that one marked?

9 MS. WHITTLE: 73.

10 Q. (BY MS. WHITTLE) Do you recognize that document?

11 A. Yes, ma'am.

12 Q. What is that document?

13 A. It's a subpoena for deposition.

14 Q. And were you served with that subpoena?

15 A. Yes, I was.

16 Q. And did you sign the subpoena?

17 A. I did not.

18 Q. You were handled this subpoena and that was  
19 pretty much the end of it?

20 A. A process server handed it to me and didn't  
21 indicate I needed to sign anything.

22 Q. And did you provide those two documents to the  
23 Railroad Commission?

24 A. Yes.

25 MR. AXE: We're going to need one more copy,

1 I think.

2 MS. WHITTLE: There should be -- are y'all  
3 taking two copies?

4 MS. DUBIEL: No, one.

5 MS. WHITTLE: All right. Well, you're  
6 probably not going to get a whole set of exhibits by the  
7 end of today. But we'll get them to you. Okay. So I  
8 think we have a practice of making five copies and that  
9 didn't work today.

10 Q. (BY MS. WHITTLE) So did you ever or were you  
11 ever part of a team that had occasion to prepare written  
12 guidance documents that explained regulatory requirements  
13 to the mining industry?

14 A. Yes.

15 Q. And what guidance documents did you help prepare?

16 A. I don't recall which ones.

17 Q. Were there many or was that a rare occasion?

18 A. It was fairly rare.

19 Q. Okay. But over the course of your time at the  
20 Railroad Commission, you were part of writing guidance  
21 documents on regulations?

22 A. I assisted.

23 Q. Okay. What on-the-job training did you get over  
24 the years specifically? We talked generally what you  
25 received, but do you recall specifically the training?

1           A. I can't really say specifically. It was related  
2           to whatever task I was assigned or potentially assigned.  
3           I received either if it wasn't available via class with  
4           office of surface mining, I worked with a mentor.

5           Q. And can you identify what you mean when you say  
6           the office of surface mining?

7           A. That's the, as I said earlier, that's the federal  
8           agency that provides oversight to the state regulatory  
9           coal program.

10          Q. Okay. Was part of your job to train others?

11          A. When needed.

12          Q. And what sort of training did you provide?

13          A. Depended on the situation.

14          Q. So would you provide training in the regulations,  
15          for example?

16          A. Sure.

17          Q. Would you provide training in how to review a  
18          permit?

19          A. Yes.

20          Q. Would you provide training in how to set a bond  
21          release amount?

22          A. That -- are you talking bond release amount or  
23          reclamation cost estimate.

24          Q. Reclamation cost estimate?

25          A. Yes, I provided training with that.

1 Q. Did you provide training on how to conduct an  
2 inspection?

3 A. No.

4 Q. Did you provide training on whether what was  
5 observed during an inspection rose to the level of a  
6 violation?

7 A. I don't believe I provided training on that, no.

8 Q. Did you provide advice on that?

9 A. We had discussions at times.

10 Q. Who's we?

11 A. Perhaps the inspector, perhaps the manager of  
12 that group.

13 Q. Did you help develop training that was used for  
14 coal regulatory programs nationwide?

15 A. I don't know what programs are used nationwide.  
16 I asked -- answered questions to the best of my ability if  
17 contacted by a colleague from another state.

18 Q. Okay. Did you ever attend conferences where you  
19 provided a presentation to other regulators around the  
20 country?

21 A. I taught courses for the Office of Surface Mining  
22 and I gave a -- I believe I gave an update, kind of a  
23 state of the state of how many permits we have, how many  
24 operator, how many acres under permit, that kind of thing.  
25 Just an overall picture of -- of the permitting to a

1 group, I don't recall which group it was. It was  
2 either -- it was something with -- with the Office of  
3 Surface Mining.

4 Q. How would the Office of Surface Mining make these  
5 trainings available to regulators?

6 A. They put out a catalog each year that provides --  
7 it's a cooperative training program where the federal  
8 government provides the cost of training -- they -- they  
9 cover the cost of travel for the training so that there's  
10 no cost to the states. And it's a cooperative effort  
11 between federal staff and volunteer state staff to put on  
12 the training.

13 Q. And where is the training held?

14 A. It's various locations.

15 Q. Is it once a year or twice a year?

16 A. The courses are offered all throughout the year.

17 Q. Okay. In your experience, what was the Surface  
18 Mining Reclamation Division's responsibility when it came  
19 to mining in Texas?

20 A. To enforce the regulations.

21 Q. Were there any other responsibilities?

22 A. I'm -- I'm not sure what you're asking on that.

23 Q. Well, was it part of the Surface Mining  
24 Reclamation Division's responsibility to interact with the  
25 public in any way?

1 A. Sure.

2 Q. And what were those responsibilities?

3 A. If you get a phone call or an -- an inquiry, they  
4 would come in maybe through the website or get a phone  
5 call, we would make our best effort to answer the  
6 questions.

7 Q. What was the Surface Mining Reclamation  
8 Division's responsibility with respect to permitting?

9 A. To review the permit application and make a  
10 recommendation for approval or denial.

11 Q. And how did that process work?

12 A. The application was reviewed by a subject matter  
13 expert or experts. They would render -- make a  
14 recommendation. They would write a memorandum typically  
15 for recommending approval or denial and then it would  
16 either be approved by the division director or by the  
17 three -- the elected three member commission.

18 Q. Is that a one time process or is that a back and  
19 forth iterative process?

20 A. It depends on the application. It could be both.

21 Q. So how large are permit files normally for a  
22 mining permit?

23 A. For a permit for a mine?

24 Q. Yes.

25 A. They're -- they're -- they're voluminous.

1 Multiple three-ring binders.

2 Q. And what are each of the revisions to those  
3 permits, what do those represent? Are they --

4 A. I'm not sure I understand.

5 Q. Okay. In the permit file, this is -- I'm not  
6 clarifying that question. I'm asking you a different one.

7 A. Okay.

8 Q. In the permit file there are lots of supplements  
9 and addendums to the permit that seem to address staff  
10 questions. What -- what is that? What's happening there?

11 MS. FREEL: Objection, form.

12 A. Okay.

13 MS. WHITTLE: Can you state the basis for  
14 your objection?

15 MS. FREEL: It's unclear if you're talking  
16 about permits in general or the San Miguel permit.

17 MS. WHITTLE: I'm talking about permits in  
18 general.

19 MR. AXE: Can we have an agreement -- this  
20 is the first deposition I've been to. Do we have an  
21 agreement that an objection by one party is good for all  
22 parties?

23 MS. WHITTLE: I'm not going to agree to that  
24 today.

25 MR. AXE: Objection, form.

1 MS. WHITTLE: Can you state the basis for  
2 your objection?

3 MR. AXE: Same reason just provided.

4 MS. WHITTLE: Okay. Well, I just clarified  
5 that it's for permits in general.

6 Q. (BY MS. WHITTLE) What -- what is that process?

7 A. For a -- I want to clarify and make sure I answer  
8 the question correctly.

9 Q. Sure.

10 A. Are you discussing a permit -- a new permit,  
11 permit renewal?

12 Q. I'm talking about a mining permit application.

13 A. Okay.

14 Q. When you go look at a file, the permit file you  
15 described, it has these three-ring binders. Do you agree  
16 that there are supplements that are added to a permit  
17 application?

18 A. Yes. The -- when the -- the application is  
19 received, it is reviewed by a team of reviewers, these  
20 application case --

21 VIDEOGRAPHER: Can we go off the record? My  
22 camera just shut off.

23 MS. WHITTLE: Yes.

24 (Discussion off the record.)

25 VIDEOGRAPHER: We're on the record at



1 10:10 a.m.

2 A. Could you repeat the question once more. I want  
3 to make sure that I'm on the right place.

4 Q. (BY MS. WHITTLE) Sure. So we were talking about  
5 supplements to permit applications. What does the  
6 supplement represent?

7 A. The supplement represents a -- an attempt to make  
8 corrections to items that were deemed to be deficient as  
9 part of the initial review.

10 Q. So how does that work? Does the staff send a  
11 letter of deficiencies to the applicant?

12 A. Generally. It's -- it's been done a couple of  
13 different ways. But the staff notes either in a -- in a  
14 deficiency letter to the applicant or a -- a technical  
15 analysis is written up that contains the deficiencies.

16 Q. And how many staff normally review a permit  
17 application?

18 A. It depends on the application, honestly.

19 Q. If we're talking about a full mining permit with  
20 all of the requirements in it.

21 A. My guess would be six to eight.

22 Q. And what is the process for responding to those  
23 technical deficiencies that the staff has noted?

24 A. The supplement would contain corrected  
25 information or changed information that would -- would be

1     their attempt to provide something that was compliant with  
2     the rules.

3           Q.   How many supplements are normally provided in a  
4     typical mining permit application?

5                   MS. FREEL:  Objection, form.

6           A.   That's something that's going to honestly be  
7     difficult to answer because every application is  
8     different.

9           Q.   (BY MS. WHITTLE)  Is it usual for there to be  
10    more than one supplement in a permit application?

11          A.   Fairly common.

12          Q.   And when there's a supplement, is only the  
13    revised portion included in that supplement?

14          A.   Again, depends on the application.

15          Q.   So for Luminant, for example, when they provide a  
16    revision, in your experience, does the supplement include  
17    only the revised portion or does it include an entire new  
18    text with the revised portion included?

19          A.   I want to make sure I clarify.  Are you talking  
20    replacement of the entire application or replacement of  
21    the text -- the section of text that was identified as  
22    being deficient?

23          Q.   Right.  I was asking if the revision includes  
24    only the replacement of the text that was deemed to be  
25    deficient.

1           A. Again, I -- I need to clarify. At times a single  
2 page would be provided if that's where the text requiring  
3 correction was -- was located. Some operators decided  
4 that if a response to Section 142 of the application -- of  
5 the regulations, they may choose to give just one page or  
6 they may replace that entire Section 142 of the  
7 application. It was -- it varied and it was different  
8 generally even with Luminant.

9           Q. So when you read a permit file and you're trying  
10 to determine what the actual permit is, how do you do  
11 that? Do you start from the latest revision or latest  
12 supplement and work forward to the actual permit  
13 application? What's the best process?

14           A. Again, it varies. Just depending on how the  
15 application was supplemented. For me as an individual if  
16 I were looking at the permit, I would start with the  
17 latest supplement and work my way back so that you know  
18 that for that page you're looking at the latest  
19 information. But I -- I would offer that you -- you would  
20 have to also look at the order issuing the permit or  
21 approving the permit because some times pages are not --  
22 there -- there may be a page that was provided in a  
23 supplement later that was called out as not being approved  
24 and they approved the -- a page or a map in a previous  
25 supplement. Generally you can start with the later and

1 work back to the earliest submittal and have a pretty good  
2 picture.

3 Q. In your experience, can it be confusing to  
4 determine what the actual permit is given that process?

5 MS. FREEL: Objection, formal.

6 MR. AXE: Objection, form.

7 A. And -- and I really -- I can't answer that  
8 question based on the predicate that it's confusing.

9 Q. (BY MS. WHITTLE) Could someone from the public  
10 walk into the library and look at those binders and know  
11 what they were looking at without guidance?

12 MS. FREEL: Objection, form.

13 MR. AXE: Objection, form.

14 A. And I don't know that answer.

15 Q. (BY MS. WHITTLE) Have you ever given anyone  
16 guidance on how to read a permit?

17 A. Sure.

18 Q. In your experience what parts of the mining  
19 process fell outside of the Surface Mining Reclamation  
20 Division's responsibility and what were the -- and were  
21 the responsibility of the Texas Commission for  
22 Environmental Quality instead?

23 A. My --

24 MS. FREEL: Objection, form.

25 MR. AXE: Objection, form.

1           A. My understanding would be -- it would depend on  
2       where they have the regulatory authority. Primarily,  
3       surface and groundwater quality and air quality. Beyond  
4       that, I don't -- I never worked for the TCEQ so I don't  
5       know.

6           Q. (BY MS. WHITTLE) Well, were there any areas of  
7       overlapping responsibilities where the agencies might work  
8       together?

9           A. The only one I can think of would be surface and  
10      groundwater quality where the TCEQ is the agency  
11      responsible for the water quality, but the Railroad  
12      Commission has reporting requirements as part of their  
13      permits.

14          Q. Did you have occasion to work with TCEQ staff on  
15      a mining permit concern?

16          A. Never on a specific concern, no, that I recall.

17          Q. Generally, did you ever work with TCEQ staff?

18          A. As a manager of the applications and permitting  
19      group as a means to ensure that my staff had the best  
20      understanding possible. I did facilitate a meeting with  
21      someone and I don't recall who it was, but someone in  
22      their -- in their water group to have them explain the  
23      TCEQ permits in -- in very general terms to our staff.

24          Q. So is it TCEQ's responsibility to enforce their  
25      permits or the railroad commission's responsibility?

1           A. I would say if it's a TCEQ permit it would be  
2           their responsibility.

3           Q. Were there any areas where jurisdiction between  
4           the agencies was unclear?

5           A. I don't -- I can't -- I -- I don't know the  
6           answer to that.

7           Q. Was it always clear to you how the division --  
8           how the division of responsibilities worked between the  
9           two agencies?

10                   MS. FREEL: Objection, form.

11           A. For me, my focus was on review of the Railroad  
12           Commission's rules. I didn't -- I -- I knew that they had  
13           other permits. There were other permits from several  
14           agencies. Our role was to ensure that they had those  
15           permits.

16           Q. (BY MS. WHITTLE) So what was your relationship  
17           with the staff at the Federal Office of Surface Mining  
18           Reclamation and Enforcement?

19           A. It was good.

20           Q. Did you interact with them?

21           A. Uh-huh.

22           Q. How often would you interact with them?

23           A. Depended on the -- on the -- on the time. I  
24           might call the Tulsa field office once a quarter.

25           Q. And did you ever speak to anyone in the national

1 office in DC?

2 A. Not related to specific permitting issues. I --  
3 I saw them at various meetings.

4 Q. Generally, what was their oversight experience --  
5 I mean, sorry, oversight responsibility in your  
6 experience?

7 MS. FREEL: Objection, form.

8 A. In my experience, the Railroad Commission is the  
9 regulatory authority for coal mining in the State of  
10 Texas. The Office of Surface Mining provided federal  
11 oversight to basically monitor the Texas program and  
12 ensure that it was being implemented in accordance with  
13 state's own rules. They provided funding for a portion of  
14 our -- our operating budget.

15 Q. (BY MS. WHITTLE) But in your experience, the  
16 State of Texas has primary responsibility for enforcing  
17 the regulations of mining in Texas?

18 A. Yes.

19 Q. What other federal agencies have regulatory  
20 responsibility for a mine in the State of Texas?

21 A. There are none with respect to mining.

22 Q. Well, activities within a mine?

23 A. United States Fish and Wildlife Service is the  
24 only other federal -- the Corps of Engineers, Army Corps  
25 of Engineers have some authority over fish and wildlife

1 species and waters of the US.

2 Q. And what other state agencies have responsibility  
3 for activities within a mine?

4 A. It would depend on the permit.

5 Q. Would Texas Parks & Wildlife Department have any  
6 responsibility?

7 A. They don't have, to my understanding, they don't  
8 have regulatory authority over the mine.

9 Q. So when you talk about looking at a mine permit  
10 and there are these other agencies that have some  
11 responsibility, do you coordinate with those agencies or  
12 are you just checking to make sure those permits have been  
13 issued?

14 MS. FREEL: Objection, form.

15 MR. AXE: Objection, form.

16 A. I don't know what they're doing now. When I was  
17 working there, we had -- we -- we conducted coordination  
18 with those agencies to -- they would request certain  
19 portions of the permit and they would look at it and they  
20 would provide feedback. And the feedback may be  
21 implemented and it may not, depending on the situation and  
22 the compliance with the rules.

23 Q. (BY MS. WHITTLE) So if the corps of engineers  
24 had feedback on how a mine might impact wetlands, for  
25 example, jurisdictional wetlands, is that something you



1 would coordinate with them or would they take separate  
2 action?

3 A. I don't know what action the corps would take.

4 Q. Okay. Did you ever have occasion to coordinate  
5 with the corps of engineers?

6 A. Not myself personally, no.

7 Q. With respect to the mining permit, what is the  
8 difference between a significant permit revision and a non  
9 significant permit revision?

10 A. A significant permit revision is -- is a  
11 substantive change to the method and conduct of  
12 operations. And that is acted upon by our three elected  
13 commissioners, the Railroad Commission's three elected  
14 commissioners, pardon me. I worked there so long I'm used  
15 to it being us.

16 In that case the staff would review,  
17 write-up a technical analysis and make a recommendation,  
18 and then at that point the commissioners decide yes or no.  
19 An administrative revision or non significant revision is  
20 handled within the division because it is deemed something  
21 that is not a material change, a significant change to the  
22 method and conduct of operations.

23 Q. Can you give me an example of a non material  
24 change to the method and conduct of operations?

25 A. Sure. A mine has a general plan for where

1 they're going to locate post-mine ponds. They show that  
2 on a map as -- as part of the permit issue -- either the  
3 initial permit or the permit renewal, and when the design  
4 plan comes in it might be a little bit different shape,  
5 it might have been shifted slightly. That's not a  
6 material change, typically is not viewed as a material  
7 change. And it's reviewed administratively. That  
8 decision is typically -- if there's any question, we --  
9 the staff would consult with the office of general counsel  
10 to ensure that we were doing it correctly.

11 Q. And can you give me an example of a significant  
12 permit revision, a -- a material change?

13 A. Well, maybe if there was a change to the -- stick  
14 with the pond analogy. If a pond in the general plans  
15 showed something that was going to be 2 acres of surface  
16 area and 12 acre feet of volume and the design plan comes  
17 in and it's going to be now 50 acres of surface area and  
18 600 acre feet of storage, that typically would be viewed  
19 as a significant change.

20 Q. Would changing the post-mine land use of an area  
21 be considered a significant or material change?

22 A. Depends on the change.

23 Q. Does it depend on the acreage that's under  
24 consideration for the change?

25 A. It's such as varied site specific unique

1 situation, I -- I don't have an answer for that.

2 Q. Was part of your job determining whether there  
3 was the difference -- sorry. Let me start over.

4 Was part of your job determining whether a  
5 permit revision was significant or non significant?

6 A. I would discuss it. Typically the staff member  
7 would take a look at it initially, the reviewer would take  
8 it and make a -- make recommendation if there was -- if  
9 there was a potential even for it to be significant, then  
10 we would discuss it and we would seek advice from the  
11 general counsel.

12 Q. Who has the final word on that?

13 MS. FREEL: Objection, form.

14 A. Division director typically.

15 Q. (BY MS. WHITTLE) While you were at the Railroad  
16 Commission, was it standard practice for staff at the  
17 Surface Mining Reclamation Division to read the underlying  
18 mining leases with landowners?

19 A. Not that I'm aware of.

20 Q. Was it standard practice for the Railroad  
21 Commission staff to ensure that it explicitly incorporates  
22 lease provisions?

23 A. There were the property ownership requirements of  
24 the rules provided that they let us know that they had a  
25 lease and typically the permits included a sample lease.

1 But most of the permits had thousands of property owners  
2 and most of it was leased.

3 Q. So just to clarify. As I understand your  
4 statement, there was not a practice to explicitly  
5 incorporate lease provisions by the staff?

6 MS. FREEL: Objection, form.

7 MR. AXE: Objection, form.

8 A. I would say it would be situational. We  
9 typically did not -- the lease is -- is an agreement  
10 between the landowner and the mining company, it's a  
11 property issue. We did not involve ourselves nor did we  
12 have the authority to involve ourselves in -- in those  
13 types of negotiations.

14 Q. (BY MS. WHITTLE) So was it your experience that  
15 the Railroad Commission makes clear a permit does not  
16 grant a private property right?

17 MS. FREEL: Objection, form.

18 A. Could you re -- I'm not sure what you're asking  
19 for there.

20 Q. (BY MS. WHITTLE) Well, you just distinguished  
21 between private property rights and a permit. Does a  
22 permit grant a private property right, in your experience?

23 MR. AXE: Objection, form.

24 A. No, the permit -- the permit grants the right to  
25 either mine or not. It doesn't override a lease.

1 Q. (BY MS. WHITTLE) So was it your understanding  
2 that a permit could change a lease?

3 A. Not to my knowledge.

4 Q. What would happen if a permit allows something  
5 that is not allowed under a lease.

6 MR. AXE: Objection, form.

7 MS. FREEL: Objection, form.

8 A. That's not, in my experience, not the -- under  
9 the control of the Railroad Commission. They adhere to  
10 their permit in the rules. What -- what happens with the  
11 lease is between the landowner and the company.

12 Q. (BY MS. WHITTLE) So was it your practice to rely  
13 on the operator statements about what it had been allowed  
14 to do under the leases?

15 MS. FREEL: Objection, form.

16 A. I'm not sure what you --

17 Q. (BY MS. WHITTLE) Well, when you were at the  
18 Railroad Commission, was it your practice to rely on the  
19 permit applicant's statements about what it has the right  
20 to do?

21 MS. FREEL: Objection, form.

22 A. My practice was to verify that they had provided  
23 documentation to demonstrate their right to enter.

24 Q. (BY MS. WHITTLE) And what documentation did you  
25 require?

1           A. It varied by the permit. Typically -- sometimes  
2       there was a -- a page that listed various -- and depended  
3       on the operator, but typically they would provide a  
4       description of what it was, whether it was a lease or the  
5       warranty deed or something of that nature. They would  
6       describe volume and page and they would indicate whether  
7       they have right to enter and whether they have right to  
8       enter for coal mine.

9           Q. Did you go review any recorded leases when they  
10      gave you the volume and page?

11      A. I did not.

12                   MS. FREEL: Objection, form.

13      A. I did not.

14      Q. (BY MS. WHITTLE) In the permit application, does  
15      the Railroad Commission require a permit applicant to  
16      identify who will be operating the mine?

17      A. Are you talking about the -- in the case where  
18      the operator might be someone different from the  
19      permittee?

20      Q. Correct.

21      A. Yes, they do.

22      Q. Why do they do that?

23      A. Because the ownership or control portion of the  
24      rules require it.

25      Q. Does the -- in a circumstance where the operator

1 is different from the permittee, does the Railroad  
2 Commission ever have direct communication with the mine  
3 operator?

4 A. It depends on how they're -- how they're set up.  
5 If they're handling the permitting, yes, or assisting with  
6 the permitting.

7 Q. Over the years, did you ever have direct contact  
8 with any of the mine operators at the San Miguel lignite  
9 mine?

10 A. Yes.

11 Q. Who?

12 A. A number of people. I did -- I did this for over  
13 20 years.

14 Q. Did you have contact with people at Atascosa  
15 Mining Company when they were the operator?

16 A. I believe that preceded my tenure.

17 Q. Did you have contact with people at the North  
18 American Coal Cooperation?

19 A. I don't recall if I had discussions with them or  
20 not.

21 Q. Did you have discussions with people at Kiewit  
22 Mining Group?

23 A. I did.

24 Q. Do you know what the substance of those  
25 communications might have been?

1           A. It was typically the only reason I would have had  
2 to contact them would have been related to their  
3 permitting.

4           Q. During your time at the Railroad Commission, did  
5 the agency ever bring an enforcement action against the  
6 mine operator at any mine in Texas?

7           A. Only if they were the permit holder.

8           Q. So in the oil and gas division, I'm familiar with  
9 the Railroad Commission's practice of issuing enforcement  
10 orders against either the owner or the operator of a  
11 mine -- of a well. How is that different in the mining  
12 world?

13          A. Because the permittee is the one that has  
14 responsibility for compliance with the permit and the  
15 rules.

16          Q. So all enforcement actions would be brought  
17 against the permittee?

18          A. That's the best of my knowledge.

19          Q. Is it unusual in Texas for the mine operator to  
20 be a different entity than the owner?

21          A. I don't really have an opinion on whether it's  
22 unusual or not.

23          Q. How many other mines have a different operator  
24 than the owner?

25          A. I don't recall the answer to that.



1 Q. How many mines are there in the State of Texas?

2 A. As of today, I don't know.

3 Q. How many were there at the end of last year?

4 MR. SOMMER: Objection as to form.

5 A. There were approximately 29 or 30.

6 Q. (BY MS. WHITTLE) And were you familiar with all  
7 of those sites?

8 A. Fairly familiar.

9 Q. Had you visited all of those sites?

10 A. I did not visit every single mine site.

11 Q. Would you explain, based on your experience, what  
12 the process of lignite mining is?

13 A. In very broad terms, the overburden or the  
14 material above the lignite seam is removed with heavy  
15 equipment, it's placed in spoil piles. The lignite is  
16 then removed. There may be multiple seams. The lignite  
17 is removed and hauled to the power plant. And then  
18 following removal of the coal or lignite, the land is  
19 reclaimed.

20 Q. And would you please explain, based on your  
21 experience, what the process of reclamation is?

22 A. Grading of the spoil piles, placement of any  
23 suitable material that may be required to establish the  
24 top four feet of reclamation and planting of -- of  
25 temporary and then followed by permanent vegetation.

1 Q. What is the purpose of a reclamation bond?

2 A. The purpose of a reclamation bond to my -- to my  
3 experience was to ensure that should the operator go  
4 bankrupt or decide they were -- otherwise they decide they  
5 were walking away from their reclamation obligations, that  
6 there would be money available to the State of Texas to  
7 call that bond and complete the reclamation according to  
8 the approved plan.

9 Q. So what is the bond supposed to cover?

10 MS. FREEL: Objection, form.

11 A. It should cover -- the intent is that it would  
12 cover everything necessary to achieve phase 3 bond  
13 release.

14 Q. (BY MS. WHITTLE) Has the State of Texas ever had  
15 occasion to call on a bond for reclamation?

16 A. Not to my knowledge.

17 Q. What does it mean to be self bonded?

18 A. Self bonded is, in essence, where the rules allow  
19 for a company that can demonstrate that they have adequate  
20 assets and adequate bond rating, there's other things that  
21 I don't recall, but basically a company that can prove up  
22 that it's financially stable and has significant assets  
23 enough to cover, they're allowed to be covered by what's  
24 called a self bond.

25 Q. So with a self bond, is there actual money

1 sitting in a bank that the State of Texas can call on?

2 A. Not to my knowledge.

3 Q. So what's the process of calling on a self bond?

4 A. I don't know the answer to that because we never  
5 did it.

6 Q. So we talked about the Jewitt mine earlier. Is  
7 the Jewitt mine self bonded?

8 A. No. At least when I was there, I don't know what  
9 they are right now, they were not self bonded any longer.

10 Q. And there's no reclamation ongoing; is that  
11 correct?

12 A. I don't know what's happening today.

13 Q. Okay. Was there any effort at the state -- at  
14 the state to call on that bond?

15 A. Not to my knowledge.

16 Q. What are the stages of bond release?

17 A. There are three stages, phase 1, 2, and 3 and  
18 basically they represent milestones in the completion of  
19 reclamation. Phase 1 being generally the area is graded  
20 and planted to temporary cover, phase 2 has to do with the  
21 water quality. Phase 3 is the final demonstration of  
22 water quality and quantity and the health and vigor and  
23 the appropriate species of the vegetation that's been  
24 planted.

25 Q. How long did each of those phases normally take?

1 MS. FREEL: Objection, form.

2 A. There's not a -- I can't give a good answer to  
3 that because it's site specific and -- and depending on so  
4 many variables.

5 Q. (BY MS. WHITTLE) Well, what is the period that  
6 the State of Texas considers is usual from mining to final  
7 bond release and return to the landowner?

8 MS. FREEL: Objection, form.

9 A. To my knowledge, we didn't have an opinion of  
10 what would be standard.

11 Q. (BY MS. WHITTLE) When you achieve final phase 3  
12 bond release, are there any obligations after that?

13 MS. FREEL: Objection, form.

14 A. My understanding is no for that particular parcel  
15 that's released.

16 Q. (BY MS. WHITTLE) And so, for example, if a  
17 parcel has achieved phase 3 bond release, a company would  
18 not need to continue to look at surface or groundwater on  
19 that parcel. Is that what I'm understanding?

20 MS. FREEL: Objection, form.

21 MR. AXE: Objection, form.

22 A. For that parcel specifically. But the  
23 groundwater monitoring wells and the surface water  
24 monitoring stations rarely encompass simply one piece of  
25 ground. They're typically a part of an overall monitoring

1 system that may need to be in place to monitor other  
2 areas.

3 Q. (BY MS. WHITTLE) Does the Railroad Commission  
4 require those groundwater monitoring wells to stay in  
5 place for long periods after phase 3 bond release?

6 MS. FREEL: Objection, form.

7 MR. AXE: Objection, form.

8 A. Not to my knowledge.

9 MR. PREISTER: Counsel, I'm going to need a  
10 rest room break in the near future.

11 MS. WHITTLE: I'll ask one more question and  
12 we can take a break.

13 MR. PREISTER: Sure.

14 Q. (BY MS. WHITTLE) Are there additional  
15 obligations for the mining company after a bond release?

16 MS. FREEL: Objection, form.

17 A. On what area?

18 Q. (BY MS. WHITTLE) Well, after, let's say, you've  
19 got a parcel of 2,000 acres and they've achieved phase 3  
20 bond release, are there any further obligations for a  
21 mining company for that area?

22 A. As long as they don't disturb it further by  
23 mining, no.

24 Q. Thank you. Okay.

25 VIDEOGRAPHER: We're going off the record

1 10:39 a.m.

2 (Brief recess.)

3 VIDEOGRAPHER: We're on the record at  
4 10:58 a.m.

5 Q. (BY MS. WHITTLE) In your experience, how does  
6 the Railroad Commission handle a problem that it  
7 identifies at a mine?

8 MS. FREEL: Objection, form.

9 A. What kind of problem?

10 Q. (BY MS. WHITTLE) If the Railroad Commission  
11 identifies a concern in an inspection report and needs  
12 some followup with the permit holder, what are the steps  
13 that are followed?

14 A. I didn't work as an inspector so I don't know the  
15 nuts and bolts of how they followed up.

16 Q. Were you ever a part of issuing notices of  
17 violation?

18 A. Not myself directly, no.

19 Q. Well, does the Railroad Commission rely on the  
20 owner or operator to investigate the problem?

21 A. No, not -- not to my knowledge.

22 Q. Does the Railroad Commission conduct its own  
23 investigations?

24 A. It did when I was there.

25 Q. And what would those investigations look like?

1 Does the Railroad Commission go out and actually take  
2 samples?

3 A. It would depend on what the issue was. If there  
4 was -- if it required it, then typically yes.

5 Q. Would the Railroad Commission ever contact a  
6 landowner to notify them of a problem identified in an  
7 inspection?

8 A. I don't know whether they did that or not.

9 Q. Were you -- would the Railroad Commission ever  
10 require a permit owner to coordinate a plan for  
11 investigation or remediation with a landowner?

12 MS. FREEL: Objection, form.

13 A. I don't know.

14 Q. (BY MS. WHITTLE) Were you ever aware of a time  
15 when that happened?

16 A. If that landowner were affected, I -- I would  
17 assume that -- that the landowner would be contacted. I  
18 don't recall specific instances of that, no.

19 Q. Does the Railroad Commission contact the  
20 landowner?

21 A. Not to my knowledge.

22 Q. The Railroad Commission would expect the permit  
23 owner to contact the landowner?

24 A. If --

25 MS. FREEL: Objection, form.

1 A. If required, I would assume so.

2 Q. (BY MS. WHITTLE) While you were at the Railroad  
3 Commission, how many -- well, how many active mine permits  
4 were there in the State of Texas?

5 A. When I was --

6 MR. SOMMER: Objection, form.

7 A. When I was there it was either 29 or 30. I don't  
8 recall exactly.

9 Q. (BY MS. WHITTLE) And how did you assist the  
10 inspection and enforcement staff?

11 A. If they had a question as to -- if they  
12 identified an issue that they thought might be a  
13 compliance issue or if they needed clarification on a  
14 particular part of the permit, they could come and discuss  
15 it.

16 Q. And when you were assistant director, would you  
17 approve issuing any notices of violation?

18 A. No.

19 Q. Who would approve that?

20 A. The inspector.

21 Q. And they would only come to you for clarification  
22 on regulations?

23 A. We were a team.

24 Q. Can you remind me, does the -- the manager of the  
25 inspection section report to the assistant director?



1           A. I don't know if they have an assistant director  
2 anymore. When I was the assistant director, they did not.

3           Q. Who did they report to?

4           A. The director.

5           Q. And in the years that you were at the Railroad  
6 Commission, did the inspection and enforcement staff ever  
7 issue a notice of violation?

8           A. Yes.

9           Q. How many notices of violation?

10          A. That I don't -- that number I don't know.

11                   MS. FREEL: Objection, form.

12          Q. (BY MS. WHITTLE) What happens after a notice of  
13 violation is issued?

14                   MR. AXE: Objection, form.

15          A. A violation is issued and a schedule for  
16 mitigation of that violation is established within the --  
17 within the violation itself. And then at that point,  
18 the -- the permit -- permit holder pursues whatever they  
19 need to do to rectify the situation.

20          Q. (BY MS. WHITTLE) And how is it determined that  
21 the situation is rectified and no further action is  
22 needed?

23          A. That the inspector believes the issue that they  
24 noted as a violation has been corrected.

25          Q. What was your view of the service mining

1 reclamation division's responsibilities with respect to  
2 the landowner, if any?

3 MS. FREEL: Objection, form.

4 A. My personal view was that we should be there to  
5 answer questions. But we didn't issue the permit to the  
6 landowner. We issued the permit to the permittee.

7 Q. (BY MS. WHITTLE) So if the landowner had  
8 questions, then it was the division's responsibility to  
9 answer those?

10 A. To the best of our ability.

11 Q. What was your process if you received an inquiry  
12 from the general public or a concern from a landowner  
13 where mining was happening?

14 MS. FREEL: Objection, form.

15 A. I believe that's a bit of a two-part questions so  
16 I'll handle it in that manner.

17 If we received an inquiry via a web-based  
18 inquiry came in through the website or a phone call, we  
19 would do our effort -- make every effort to answer those  
20 questions at that time. Either -- typically it was a  
21 phone call.

22 If a landowner voiced a concern, my practice  
23 was to listen to hear out what they -- what their concern  
24 was and then hand it over to -- if it was a permitting  
25 issue, then we would -- we would review the permit and see

1 if there was something that needed to be corrected in the  
2 permit. If it was an issue on the ground with active  
3 operations, then I would -- my practice was to refer them  
4 to the -- the manager of the inspection enforcement  
5 section. And typically my way of doing that was to gather  
6 their name and phone number and have that person reach out  
7 to the landowner. And then they would normally schedule a  
8 time for the -- the inspector to meet with the landowner  
9 on site and proceed from there.

10 Q. (BY MS. WHITTLE) Did you ever have any occasion  
11 where the division declined to speak to a landowner?

12 MS. FREEL: Objection, form.

13 A. I don't know for the division.

14 Q. (BY MS. WHITTLE) Did you ever decline to speak  
15 to landowner?

16 A. Not to my recollection.

17 Q. Would you have -- let's see.

18 Was part of your job responsibilities to  
19 respond to inquiries from the public?

20 A. I wouldn't say it was part of my job  
21 responsibility. It was something I did.

22 Q. Do you know if it was listed among your job  
23 responsibilities?

24 A. I don't recall.

25 Q. So if you -- if you granted a permit holder or if

1 the Railroad Commission granted a permit holder a waiver  
2 from a regulatory provision, did the Railroad Commission  
3 require proof of consultation with the landowner that the  
4 waiver was acceptable to the landowner?

5 A. I really can't answer that question because the  
6 predicate there is that the commission could grant a  
7 waiver of the rules.

8 Q. Well, if the rules require a certain amount of  
9 ground cover and the applicant is asking for a waiver,  
10 would you ask the applicant for proof that the landowner  
11 has actually approved that?

12 A. Again, I don't recall there ever being a waiver  
13 of that nature.

14 Q. Did you ever become aware during your tenure at  
15 the Railroad Commission that a company misrepresented  
16 something to the Railroad Commission in a permit  
17 proceeding?

18 A. I don't recall there being misrepresentation.

19 Q. Has a landowner ever presented you with evidence  
20 that the permit allows something that is not allowed in  
21 the lease?

22 A. I don't recall hearing that.

23 Q. What would you have done in that circumstance?

24 MR. AXE: Objection, form.

25 MS. FREEL: Objection, form.

1 MR. SOMMER: Objection, form.

2 A. In that situation I would -- in my role, in the  
3 division's role, we would have looked to see what the  
4 rules require and what their permit required. And if they  
5 were in compliance there, then it's a -- it's a lease  
6 issue and I would encourage the landowner to work with the  
7 company to resolve the lease -- whatever concern they had  
8 with the -- the requirements of the lease.

9 VIDEOGRAPHER: Can you put your microphone  
10 on your jacket, please?

11 Q. (BY MS. WHITTLE) Did you ever develop a  
12 friendship with a landowner that was complaining to the  
13 Surface Mining Reclamation Division about a mine owner or  
14 operator?

15 MS. FREEL: Objection, form.

16 A. Not that I recall.

17 Q. (BY MS. WHITTLE) Was it part of your job to  
18 represent the Railroad Commission in public?

19 A. At times.

20 Q. Did you attend meetings or conferences on behalf  
21 of the Railroad Commission?

22 A. I did.

23 Q. Who did you meet at those functions? Were they  
24 other regulators? Did you meet industry parties?

25 MR. AXE: Objection, form.

1 MS. FREEL: Objection, form.

2 A. It depended on the -- on the event.

3 Q. (BY MS. WHITTLE) Well, did you meet both types  
4 of people I just identified?

5 A. Yes.

6 Q. Did you ever meet landowners at those  
7 conferences?

8 A. I don't recall if there were landowners present  
9 or not.

10 Q. Did you ever attend public meetings on a proposed  
11 mining permit?

12 A. Yes.

13 Q. Was part of your job to provide expert testimony  
14 within your areas of responsibility and expertise at  
15 hearings and legal actions?

16 A. Yes.

17 Q. Did you ever have occasion to provide expert  
18 testimony on behalf of the Railroad Commission?

19 MS. FREEL: Objection, form.

20 A. I'm trying to recall. There were one or two  
21 hearings where I -- I participated.

22 Q. (BY MS. WHITTLE) And when were those?

23 A. I don't recall exactly. It's been years.

24 Q. Do you recall what it was for?

25 A. One was for the -- excuse me -- for the Sabine

1 mine. The other one I don't recall what it was.

2 Q. What is the importance of the post-mine land  
3 using designation?

4 A. It's required by the rules.

5 Q. Well, what does it mean?

6 MS. FREEL: Objection, form.

7 A. A post-mine land use designation, to my  
8 understanding, identifies the use of that land after  
9 reclamation is complete and it establishes the reclamation  
10 standards with respect -- typically with respect to  
11 vegetation.

12 Q. (BY MS. WHITTLE) What is the difference between  
13 a post-mine land use of pastureland versus industrial  
14 commercial?

15 A. Pastureland is going to be planted to pasture  
16 type species. Industrial commercial is something that is  
17 related to industrial use.

18 Q. So are there more requirements that need to be  
19 met for a pastureland post-mine land use?

20 A. There are different requirements.

21 Q. What does the term selective haul back mean?

22 A. Selective haul back is the material that will be  
23 used to reclaim the top -- to represent the top 4 feet of  
24 the reclaimed surface to ensure that the material left is  
25 equal to or better than that of what was premine.

1 Q. When you're talking about topsoil versus subsoil,  
2 what does the term selective haul back mean?

3 A. Are you talking specifically to San Miguel?

4 Q. Sure.

5 A. My understanding, I was not a -- a soil scientist  
6 and -- and others reviewed those sections. But my  
7 understanding was that it was -- the top soil is  
8 segregated and then the remainder of that top 4 feet being  
9 the subsoil is part of the 4 foot haul back material, the  
10 subsoil was placed first and then the topsoil was placed  
11 last to ensure that that A horizon that was there premine  
12 is present after the mining reclamation.

13 Q. And is that typical at mines in Texas?

14 MS. FREEL: Objection, form.

15 A. The handling plans are different at just about  
16 every mine.

17 Q. (BY MS. WHITTLE) So would you call that practice  
18 selective haul whack?

19 A. For San Miguel.

20 Q. What does it mean to place mixed overburden for  
21 reclamation?

22 A. Mixed overburden is where the top 4 feet itself  
23 is not selectively handled, but zones of material that  
24 have been identified through bore hole drilling and  
25 chemical and textural analyses have identified the



1 material that would makeup when mixed together and placed  
2 on the top 4 feet, material that's equal to or better than  
3 that of the premine condition.

4 Q. So who does that testing?

5 A. The -- the permittee provides the documentation  
6 of that testing. I don't know who does it for them.

7 Q. Does the Railroad Commission review the testing  
8 to approve the use of mixed overburden?

9 A. Yes.

10 Q. Does the Railroad Commission look at lease  
11 requirements when determining whether to approve the  
12 placement of mixed overburden?

13 A. Not to my knowledge.

14 Q. There's certain requirements under the Texas code  
15 for planting and establishing a perennial grass that meets  
16 the success standard for two growing seasons on the  
17 reclaimed surface.

18 Are you familiar with those regulations?

19 A. In a general sense.

20 Q. Would you please explain those requirements as  
21 you understand them?

22 MR. AXE: Objection, form.

23 MS. FREEL: Objection, form.

24 A. In order to receive final bond release, the area  
25 is -- is monitored and studied prior to submittal of that

1 application to document that both species diversity or  
2 homogeneity, depending on the -- on the type of species  
3 required for that land use, that there's sufficient growth  
4 of that material and that it's of the right species.

5 Q. (BY MS. WHITTLE) And who makes that  
6 determination?

7 A. That is -- the -- the data is collected and  
8 analyzed by the company or one of their consultants. And  
9 then the results of that and it's part of the company's  
10 demonstration that they have met the -- the requirements  
11 for bond release, it's then reviewed by a staff -- a staff  
12 reviewer. But the ultimate decision on whether it's  
13 approved is that of the commissioners.

14 Q. Through the bond release application?

15 A. That's correct.

16 Q. There are certain requirements under the Texas  
17 code for a mine owner or operator to prevent water from  
18 coming into contact with acid-forming and toxic-forming  
19 spoil. Are you familiar with those regulations?

20 A. In a general sense.

21 Q. Would you please explain those requirements as  
22 you understand them?

23 MS. FREEL: Objection, form.

24 MR. AXE: Objection, form.

25 A. My understanding is that it's ensuring that that

1 material is not exposed at the surface and not in the top  
2 4 feet of the reclaimed surface.

3 Q. (BY MS. WHITTLE) And why is that important?

4 A. To maintain water quality.

5 Q. What does acid-forming and toxic-forming spoil do  
6 to water quality?

7 MR. AXE: Objection, form.

8 MS. FREEL: Objection, form.

9 A. That's minutia that I'm not aware. I'm not a  
10 scientist.

11 Q. (BY MS. WHITTLE) But you can correspond keeping  
12 toxic-forming and acid-forming spoil away from water,  
13 that's the reason for the regulation according to you?

14 MS. FREEL: Objection, form.

15 MR. AXE: Objection, form.

16 A. Well, I'm not a legislature. I don't know the  
17 reason for putting that in -- into the rule was. It was  
18 the rule.

19 Q. (BY MS. WHITTLE) Well, so in your experience,  
20 why would -- well, so how does the Railroad Commission  
21 determine whether those requirements to keep water from  
22 being in contact with acid-forming and toxic-forming spoil  
23 have been met?

24 MS. FREEL: Objection, form.

25 A. The company conducts soil testing on a grid basis

1 and they analyze that -- that -- the soil that they  
2 collect in those grids down to, I believe, it's down to a  
3 depth of 4 feet which is what -- to meet the requirements  
4 of the rules. And they submit documentation of that  
5 analysis to the commission.

6 Q. (BY MS. WHITTLE) If water is in contact with the  
7 spoil, would that violate the regulation?

8 MS. FREEL: Objection, form.

9 MR. AXE: Objection, form.

10 A. I don't know. That's an enforcement issue that I  
11 don't have -- I don't know.

12 Q. (BY MS. WHITTLE) Well, didn't you consult with  
13 enforcement about these regulations?

14 A. Not that one specifically.

15 Q. Okay.

16 A. That I recall.

17 Q. Do you know if the Railroad Commission during  
18 your tenure there ever brought an enforcement action for  
19 water being in contact with spoil?

20 MS. FREEL: Objection, form.

21 A. I don't know if it was related to -- there were  
22 violations that may have been written relative to water  
23 quality. How that -- how the water quality issue came --  
24 arised, I don't know.

25 Q. (BY MS. WHITTLE) Okay. There's certain

1 requirements under the Texas code for a mine owner or  
2 operator to minimize changes in water quality and  
3 quantity. In the depth to groundwater and in the location  
4 of surface water channels so that the approved post mining  
5 land use of the permit area is not adversely affected.

6 Are you familiar with those regulations?

7 A. In general terms.

8 Q. Would you please explain those requirements  
9 regarding minimizing changes to groundwater and surface  
10 water as you understand them?

11 MS. FREEL: Objection, form.

12 MR. AXE: Objection, form.

13 A. The permit contains a plan for monitoring surface  
14 and groundwater resources. For surface water that  
15 included monitoring stations that typically, to my  
16 recollection, it's been six months almost since I was  
17 there, that they would submit, I think the data was  
18 quarterly. It depended on their TCEQ permit and permits  
19 were a little different at times.

20 But basically they had to submit water  
21 quality analyses for -- at their monitoring stations to  
22 document the water quality at that -- at those locations  
23 along with typically, if available, flow data. There was  
24 a similar set up for groundwater to monitoring, where they  
25 would have monitoring wells that would monitor both --

1     that would sample for both the quality of the water and  
2     the water level to demonstrate quality and quantity.

3           Q.   (BY MS. WHITTLE)  I've seen a certain document  
4     and I wanted to know if you could explain what it is.  
5     What is a cumulative hydrologic impact assessment?

6           A.   Cumulative hydrologic impact assessment, and I'll  
7     say CHIA just because it's easier, that is something that  
8     the staff performs and it's included as part of the final  
9     technical analysis when a permit -- a new permit is  
10    getting ready to be -- potentially be issued or the  
11    company is requesting renewal of a permit.  What that does  
12    is it looks at the surface water quality and quantity on a  
13    regional basis.  If there are several mines -- several  
14    mines might be incorporated into that.  I -- I believe it  
15    was based on a river basin.

16          Q.   Was part of your job to supervise the staff  
17    preparation of the CHIA?

18          A.   I oversaw them, yes.

19          Q.   So what studies does the Railroad Commission do  
20    to assess the surface water hydrologic balance?

21          A.   That was out of my realm.  I don't know exactly.

22          Q.   Okay.  So the regulations we were talking about,  
23    about water quality and quantity, was the CHIA related to  
24    those regulations in any way?

25               MS. FREEL:  Objection, form.

1           A. It's related to the extent that it's staff's best  
2       assessment on what the impacts mining -- what impacts  
3       mining might have on that regional area from -- from  
4       the -- whether there would be expected losses or gains or  
5       impacts to certain parameters and quality. But it's -- it  
6       was really just the staff's assessment of what they  
7       anticipated based on the data that they had.

8           Q. (BY MS. WHITTLE) So based on your experience,  
9       how did the Railroad Commission determine whether there  
10      the requirements related to water quantity and quality  
11      were met?

12          A. Overall?

13          Q. Yes.

14          A. That information was provided, again, the company  
15      or one of their -- their consultants, because they were --  
16      the burden was on the company to demonstrate that they had  
17      met the milestones for reclamation. So they would submit  
18      the data along with the analysis of a qualified expert  
19      that demonstrated that they met water quality and quantity  
20      requirements prior to bond release.

21          Q. Did the Railroad Commission, while you were  
22      there, ever interact directly with a qualified expert on  
23      behalf of the company?

24          A. Only when there were questions, to my knowledge.

25          Q. So what does the Railroad Commission do if there

1 are changes to water quality, quantity, depth to  
2 groundwater, or location of surface water channels as a  
3 result of the mine?

4 MS. FREEL: Objection, form.

5 MR. AXE: Objection, form.

6 A. I don't really have an answer for that. It would  
7 be situational and it would be accounted for and  
8 ultimately the commissioners decide on whether to issue  
9 that permit based upon the site specific conditions.

10 Q. (BY MS. WHITTLE) Well, what if we look at it  
11 from bond release. If there are changes to the water that  
12 are permanent, how would that impact bond release?

13 A. I don't know. The -- the staff would review it  
14 and make a recommendation whether it was appropriate or  
15 not. The commissioners would have the final action.

16 Q. The bond release calculation you described  
17 before, does that include anything with respect to water?

18 MS. FREEL: Objection, form.

19 A. Typically not. Typically not.

20 Q. (BY MS. WHITTLE) So --

21 A. Other than monitoring -- ongoing monitoring until  
22 final bond release.

23 Q. There are certain requirements under the Texas  
24 code for a mine owner or operator to prevent, minimize,  
25 and treat water pollution. Are you familiar with those



1 regulations?

2 A. In general terms.

3 Q. Would you please explain the requirements as you  
4 understand them?

5 MS. FREEL: Objection, form.

6 MR. AXE: Objection, form.

7 A. The requirements are that they -- they have to  
8 maintain the water quality standards that are identified  
9 by their permit or their -- their commission permit or  
10 their TCEQ permit.

11 Q. (BY MS. WHITTLE) Based on your experience, how  
12 did the Railroad Commission determine whether those  
13 requirements have been met?

14 A. For whom?

15 Q. Determine whether the mine owner or operator met  
16 the requirements to not impact water -- water quality?

17 A. That would be part of the -- in my experience,  
18 that would be part of the demonstration that was provided  
19 when they're seeking bond release.

20 Q. And if there is an impact to water quality, how  
21 does that -- how is that treated in the bond release?

22 A. My -- my experience is the bond release would be  
23 denied, and they would have to maintain performance bond  
24 and reclamation obligations until it did.

25 Q. So the performance bond and reclamation

1 obligations could be applied to water pollution concerns?

2 MR. AXE: Objection, form.

3 MS. FREEL: Objection, form.

4 A. I don't know the answer to that, because we  
5 never -- we never called a bond; in my tenure we never  
6 called a bond.

7 Q. (BY MS. WHITTLE) But you could require the bond  
8 be held until water quality concerns are addressed at a  
9 site?

10 A. The bond is held or a portion, an appropriate  
11 portion is held until final bond release.

12 Q. If a certain area has been released from bond and  
13 water quality issues are determined later because, as you  
14 mentioned, groundwater doesn't respect boundaries, could  
15 the Railroad Commission reopen a bond release in that  
16 circumstance?

17 MS. FREEL: Objection, form.

18 MR. AXE: Objection, form.

19 A. I don't know the answer to that.

20 Q. (BY MS. WHITTLE) In your experience, that's  
21 never occurred?

22 A. There were areas that were rebonded. I wouldn't  
23 say they reopened the -- a bond release application  
24 because once it's acted upon, it becomes final commission  
25 order, it's done. However, if -- if there's a

1 demonstration that mining is continuing to impact  
2 something, I would assume that they could -- the  
3 commission could require that area be rebonded.

4 Q. What does a rebond mean?

5 A. Meaning that area is brought back into the fold  
6 with respect to the area covered by the performance bond.

7 Q. Would the performance bond potentially have to be  
8 increased?

9 A. Depends on what the calculations showed.

10 Q. There's certain requirements under the Texas code  
11 for a mine owner or operator to complete all reclamation  
12 efforts on all land disturbed by surface mining activities  
13 as contemporaneously as practicable with mining  
14 operations. Are you familiar with those regulations?

15 A. Yes.

16 Q. Would you please explain those requirements as  
17 you understand them?

18 MS. FREEL: Objection, form.

19 MR. AXE: Objection, form.

20 A. My understanding of that would be to keep the  
21 reclamation process moving. There are times when  
22 operational needs delay things on a certain area. And  
23 it's the company's obligation to explain what that delay  
24 would be and get that approved.

25 Q. (BY MS. WHITTLE) What is as contemporaneously as

1 practicable mean in practice?

2 A. I don't know.

3 MR. AXE: Objection, form.

4 MS. FREEL: Objection, form.

5 A. If I knew the answer to that we'd both know it.  
6 It's -- contemporaneous is a word that I don't know that  
7 it's defined.

8 Q. (BY MS. WHITTLE) Well, based on your experience,  
9 how did the Railroad Commission determine whether the  
10 requirements to reclaim is?

11 A. In my experience, we would have considered  
12 contemporaneous to be compliant with the timelines  
13 identified in their permit.

14 Q. So if the timelines identified in their permit  
15 were not met and kept getting extended, would that be  
16 something the Railroad Commission might act upon?

17 MS. FREEL: Objection, form.

18 MR. AXE: Objection, form.

19 A. Well, I would say if they were extended, then the  
20 commission did act on it. If it was not within something  
21 that was approved, and extensions were approved at times  
22 for a good -- for -- for legitimate reasons, they would be  
23 subject to enforcement action if they were outside of  
24 the -- excuse me, if they were outside of the requirements  
25 of their permit as it's approved at that time.

1 Q. (BY MS. WHITTLE) Is it typical for reclamation  
2 to be postponed for decades after mining is complete?

3 MS. FREEL: Objection, form.

4 MR. AXE: Objection, form.

5 A. Again, I would say that if reclamation or a  
6 portion of it is done decades beyond, it's because it's  
7 part of the approved plan. There's a reason for it.

8 Q. (BY MS. WHITTLE) Are you aware of other mines  
9 beyond the San Miguel lignite mine that has approved  
10 reclamation to extend for 40 years or 50 years beyond when  
11 mining was completed?

12 MS. FREEL: Objection, form.

13 MR. AXE: Objection, form.

14 A. Well, I can't really answer that because we have  
15 not had regulatory requirements for mining for 40 or 50  
16 years.

17 Q. (BY MS. WHITTLE) Well, we'll go through this  
18 later, but the San Miguel lignite mine approves  
19 reclamation to be completed more than 30 years after the  
20 last approval was made on the Peeler Ranch. Mining was  
21 completed on the Peeler Ranch in 2004. So there the  
22 permit has approved reclamation to be approximately 40, 50  
23 years after mining was completed on the Peeler Ranch.  
24 Have you ever seen that on any other permit?

25 MR. AXE: Objection, form.

1 MS. FREEL: Objection, form.

2 A. I -- I don't know -- I -- I can't speak to  
3 recollection of what's in the other permits.

4 Q. (BY MS. WHITTLE) Does that surprise you?

5 MR. AXE: Objection, form.

6 MS. FREEL: Objection, form.

7 A. It doesn't surprise me because whatever was  
8 approved at the -- at the -- for the San Miguel mine with  
9 respect to the Peeler property is what was in the permit  
10 which was publicly noticed and acted on by the  
11 commissioners who made the final decision as to whether it  
12 was right or wrong.

13 Q. (BY MS. WHITTLE) There's certain requirements  
14 under the Texas code for a mine owner or operator to  
15 restore the mined area to prior or better uses. Are you  
16 familiar with those regulations?

17 A. In general terms.

18 Q. Would you please explain those requirements as  
19 you understand them?

20 A. As I understand --

21 MS. FREEL: Objection, form.

22 MR. AXE: Objection, form.

23 A. Pardon me. As I understand it, reclamation to  
24 prior and better uses speaks to the land -- post-mine land  
25 use. It's -- if the -- if the alternative post-mine land

1 use is agreed to -- is something that's requested and  
2 agreed to by the landowner or the landowner wants it, then  
3 that's deemed to be a better use regardless of what it is.

4 Q. (BY MS. WHITTLE) So if the landowner wants a  
5 post-mine land use that is pastureland and the permit  
6 allows that the post-mine land use could be industrial  
7 commercial, would that be considered a prior or better use  
8 if it's contrary to what the landowner wants?

9 MR. AXE: Objection, form.

10 MR. SOMMER: Objection, form.

11 MS. FREEL: Objection, form.

12 A. If it was deemed to be approvable and compliant  
13 with the rules, then I would have to say yes. My  
14 understanding is the rules require consultation with the  
15 landowner, not approval.

16 The practice was to try and -- oops -- was  
17 to ensure the landowner had been consulted.

18 Q. (BY MS. WHITTLE) So if the landowner didn't  
19 agree?

20 A. I can't recall a situation where a landowner  
21 didn't agree that I was aware of. Might have happened,  
22 but I wasn't aware of it.

23 Q. Okay. So how does the Railroad Commission  
24 determine whether those requirements have been met?

25 A. I was not a land use reviewer. That would be

1 the -- the technical reviewer that looked at that and  
2 looked at the applicable portions of the rules and made  
3 a -- made a decision -- made a recommendation as to  
4 whether there had been or not.

5 Q. So there are certain requirements under the Texas  
6 code for a mine owner or operator to cover coal and acid  
7 and toxic-forming materials such that there is minimal or  
8 no cover in direct contact with groundwater or surface  
9 water. Are you familiar with those regulations?

10 A. Not that particular regulation, no.

11 Q. You're not familiar with the regulation requiring  
12 that coal and acid and toxic-forming materials be covered  
13 such that they're not in contact with groundwater or  
14 surface water?

15 MR. AXE: Objection, form.

16 MS. FREEL: Objection, form.

17 A. That would be the soil handling plan that would  
18 be reviewed as part of the -- part of the technical review  
19 by a soil scientist or geologist.

20 Q. (BY MS. WHITTLE) So this separate regulatory  
21 provision is similar, in your mind, to the one regarding  
22 keeping water away from spoil?

23 A. I would say they're hand in hand.

24 MR. AXE: Objection, form.

25 A. Pardon me. I would say they're hand in hand.



1 One part of the rules requires that they characterize  
2 what's there and develop a handling plan, that handling  
3 plan would need to be compliant with the other parts of  
4 the rules.

5 Q. (BY MS. WHITTLE) And for both of those rules,  
6 it -- it is required that the spoil not be in contact with  
7 water; is that correct?

8 MR. AXE: Objection, form.

9 MS. FREEL: Objection, form.

10 A. I don't know how that would be possible. I think  
11 the acid-forming material requirement would be there. But  
12 I don't know -- I don't --

13 Q. (BY MS. WHITTLE) You don't think it's possible  
14 to keep coal or the spoil away from water?

15 A. Well, they -- the -- the handling plan would  
16 include a plan for digging -- for burying that -- that  
17 material as deep as possible into the pit.

18 Q. Away from water?

19 A. To my knowledge.

20 Q. I've seen documents where staff at the Surface  
21 Mining Reclamation Division referred to a, quote, unquote,  
22 client. Do you know who they were referring to?

23 A. No, ma'am, I don't.

24 MR. AXE: Objection, form.

25 MS. FREEL: Objection, form.

1 Q. (BY MS. WHITTLE) Was the coal mining industry  
2 considered a client of the Surface Mining Reclamation  
3 Division?

4 MS. FREEL: Objection, form.

5 MR. AXE: Objection, form.

6 A. I don't know why someone would have used that  
7 term, client.

8 Q. (BY MS. WHITTLE) In your experience at the  
9 Railroad Commission, did a landowner ever complain that  
10 reclamation was not done properly?

11 A. I don't recall specifics. There may have been.

12 Q. Did any landowner ever complain to you that  
13 reclamation was not done properly?

14 A. In their opinion it happened.

15 Q. So a landowner complained to you that they  
16 thought reclamation, in their opinion, had not been done  
17 properly. Is that what I understand?

18 A. Uh-huh.

19 Q. How often did that occur?

20 A. I would say it was extremely infrequent.

21 Q. And what did you do in those circumstances?

22 A. I typically -- if it came to -- if it was -- if  
23 it was a question that -- that arose to me, then I would  
24 contact our inspection and enforcement section and turn it  
25 over to them and let them investigate in the field.

1 Q. In your experience at the Railroad Commission,  
2 did you or Railroad Commission staff ever refuse to meet  
3 with a landowner with concerns about a mining permit or  
4 reclamation?

5 A. I don't recall that I ever did. I can't speak to  
6 anybody else.

7 Q. But it was your practice to meet with them if  
8 they asked?

9 A. That was -- I'm -- I'm open and -- and willing to  
10 help and that was always where I wanted to be, at least to  
11 hear them out.

12 Q. Okay. I'd like to go through the San Miguel  
13 permit history. When was the first occasion you ever  
14 worked on anything related to the San Miguel lignite mine?

15 A. It would have been when I transferred to  
16 permitting at the earliest, in 2001.

17 Q. So from the abandoned mine?

18 A. When I moved from the abandoned mined land  
19 section to the permitting group, that would have been the  
20 earliest I had any engagement with their permit.

21 Q. And over the years, what responsibilities have  
22 you had with respect to the San Miguel lignite mine?

23 A. I was responsible for reviewing several mine  
24 plans in permit renewals a couple of times, reviewed some  
25 structure designs, did some cost -- the reclamation cost

1 calculations.

2 Q. And once you were in a supervisory role, what  
3 were your responsibilities?

4 A. Just to review the work that my staff had done  
5 and make every effort to be as consistent in the  
6 application of the rules as possible.

7 Q. Over the years, what people have you interacted  
8 with who were acting on behalf of San Miguel?

9 A. Some of their permitting staff, some of their  
10 various consultants.

11 Q. Who are those people?

12 A. I don't recall all their names.

13 Q. Did you ever interact with attorneys at Jackson  
14 Walker?

15 A. Yes.

16 Q. Did you interact with Mike Massey?

17 A. Yes.

18 Q. Did you interact with Abbie Abazari (phonetic)?

19 MS. FREEL: Objection, form.

20 A. I think maybe you mean Allie.

21 Q. (BY MS. WHITTLE) Allie Abazari?

22 A. Yes.

23 Q. Did you interact with Lisa Coast?

24 A. Yes.

25 Q. And who is she?

1 A. I don't know exactly what she does for them.

2 Q. Did you interact with Mike Kezar at San Miguel?

3 A. Very limited early on.

4 Q. Did you interact with Mark Weatherstone?

5 A. Again, very limited.

6 Q. Did you interact with Nellie Frisbee?

7 A. Yes.

8 Q. Did you interact with Dave Burris?

9 A. Yes.

10 Q. And did you interact with Joe Harris?

11 A. Yes.

12 Q. And are -- what were your interactions with Dave  
13 Burris?

14 A. Typically when he had a question about a  
15 permitting issue, something he was looking to permit or  
16 he'd received a comment letter noting deficiencies.  
17 Really just answering questions to the best of my ability.

18 Q. So as a supervisor, then, you also had contacts  
19 with people at San Miguel?

20 A. At times.

21 Q. Have you ever interacted with anyone from Brazos  
22 Electric Power Cooperative?

23 A. I don't recall that I have.

24 Q. Have you ever interacted with anyone from South  
25 Texas Electric Cooperative?

1           A. They may have had someone in a meeting, but  
2 not -- not that I recall.

3           Q. Have you ever interacted -- have you ever visited  
4 the San Miguel lignite mine?

5           A. Yes.

6           Q. When?

7           A. The last time would have been a meeting that we  
8 had with Mr. Peeler.

9           Q. Do you recall when that was?

10          A. I don't recall exactly when it was. I think it  
11 was early 2018.

12          Q. How many times have you visited the San Miguel  
13 lignite mine?

14          A. Six or eight maybe.

15          Q. When was the first time you visited the mine?

16          A. I don't recall that.

17          Q. Was it early on in your tenure in the permit  
18 section?

19          A. Fairly -- it would have been fairly early on.

20          Q. Have you ever met Alonzo Peeler, Junior? We  
21 refer to him as Mr. Peeler.

22          A. Yes, I believe once.

23          Q. Have you ever met Barbara Peeler?

24          A. I don't recall if I've met her or not.

25          Q. Have you ever met Jason Peeler?

1 A. Yes.

2 Q. And when did you meet him?

3 A. I met him at the meeting that we had out there in  
4 early 2018 at the mine.

5 Q. And what was that meeting?

6 A. What -- what do you mean?

7 Q. Well, how did that meeting occur? Who asked for  
8 it?

9 A. I don't recall who asked for it. I assume it may  
10 have been Mr. Peeler. I -- I don't recall who asked for  
11 it. Mr. Peeler had -- had complained about water  
12 discharging from one of the sedimentation ponds flooding  
13 an adjacent area and had concerns about the water quality.  
14 And so I went out with our -- the manager of the  
15 inspection enforcement section to meet with him.

16 Q. And what did you discuss with Mr. Peeler?

17 A. I don't recall specifics. In general terms,  
18 his -- his concerns about the water, some trees dying  
19 downstream of the power plant, and an area that -- that  
20 was -- vegetation was not thriving in, is my recollection.

21 Q. And what did you tell him?

22 A. I told him that we would -- to my recollection, I  
23 told him that we would -- we would look at the permit and  
24 Jason -- the inspection group would identify if there were  
25 issues that they could, you know, that they could address

1       them if there was a compliance concern.

2           Q.   Did you ever contact Mr. Peeler after that to let  
3       him know your findings?

4           A.   I don't recall whether we did or not.

5           Q.   Were there any findings?

6           A.   I -- the -- with respect to the water from the  
7       pond, my recollection is that our inspector collected a  
8       water sample and sent it to a lab and the determination  
9       was made that water quality met standards approving --  
10       allowing it to be released. I don't recall how that was  
11       relayed to Mr. Peeler.

12          Q.   When you were talking to Mr. Peeler and Jason  
13       Peeler, did you ever tell them that the area A had been  
14       investigated for some time by the Railroad Commission?

15          A.   I don't recall that.

16          Q.   Did you tell him that the area around the power  
17       plant was not in your purview?

18          A.   I don't recall whether I told him that or not.

19          Q.   Did you take Mr. Peeler's concerns seriously?

20          A.   Yes, absolutely.

21          Q.   But you never followed up on them?

22          A.   I don't recall what follow up occurred. Again,  
23       it's been six months since I left.

24          Q.   Have you ever talked to anyone else representing  
25       the Peelers?



1 A. Not to my knowledge.

2 Q. Do you recall that you and I had a phone  
3 conversation at one point?

4 A. Perhaps. I got lots of phone calls. I don't  
5 recall our -- our conversation.

6 Q. All right. So I'd like to look at this Exhibit  
7 75. Can you identify this for me, if you recognize it?

8 A. It appears to be a -- a listing of the commission  
9 orders related to the San Miguel mine. I don't know where  
10 it came from.

11 Q. Well, I'll submit to you it came from the  
12 Railroad Commission.

13 A. Fair enough.

14 Q. Does this look like a document that would have  
15 come from the Railroad Commission?

16 A. I don't know. I don't recognize this document  
17 itself.

18 Q. Do you recognize this -- whether the information  
19 on the document is correct or not?

20 A. I can't speak to that. I -- I don't have the  
21 files memorized.

22 Q. Okay. Do you know what the latest permit is for  
23 San Miguel; what the permit number is?

24 A. When I left, it was 11 G.

25 Q. And do you recall when the permit was originally

1 issued?

2 A. The very first permit?

3 Q. Yes, sir.

4 A. No, I do not.

5 Q. What revisions of the permit were you involved  
6 in?

7 A. That I can't quantify that.

8 Q. Would it have been anything after 2001?

9 A. That's the only time it could have been.

10 Q. Were you involved in every revision for San  
11 Miguel?

12 A. No, ma'am.

13 Q. Why not?

14 A. They -- if it was out of my area of expertise, I  
15 wouldn't have had a reason to look at it.

16 Q. Were there certain revisions that didn't involve  
17 areas of your expertise?

18 A. Uh-huh.

19 Q. What are your areas of expertise?

20 A. The areas I reviewed typically were mine plan  
21 changes, post-mine topography and structure designs.

22 Q. Structure designs?

23 A. And bottom map calculations for the cost  
24 calculation.

25 Q. Can you explain structure design --

1 A. Like a pond design or something of that nature.

2 Q. Would you have interacted with Kiewit for bond --  
3 for a pond design?

4 A. I don't recall who I interacted with.

5 Q. Would you interact with the MSHA permit holder  
6 for pond design?

7 A. I would have reacted -- I would have interacted  
8 the permittee, and if they directed me to their operator  
9 or consultant, then I would have done that.

10 Q. Okay. So I'd like to show you what's been marked  
11 Exhibit 76. Can you identify this for me?

12 A. Okay. This is a letter to Mr. Peeler -- I'm  
13 sorry, it was to the senior mineral manager -- mineral  
14 management. It appears to be our response to the meeting  
15 that we had at the site.

16 Q. So this letter is dated what?

17 A. April 2, 2018.

18 Q. And who wrote this letter?

19 A. This letter was written by one of my staff.

20 Q. Who signed the letter?

21 A. I signed the letter.

22 Q. Who of your staff wrote it?

23 A. The initials are ARK. It appears to be Adam  
24 Krabbenhoft.

25 Q. What was this responding to?

1           A.   Appears that it was responding to a letter from  
2   Mr. Scott dated February 9, 2018.

3           Q.   What was his letter requesting?

4           A.   I don't recall what the letter requested.  
5   There's several things enumerated. I can only assume that  
6   that was -- those are the issues -- the items enumerated  
7   in his letter.

8           Q.   Okay. Why don't you take a moment and read just  
9   the cover letter.

10          A.   Okay.

11          Q.   You finished?

12          A.   Okay.

13          Q.   Do you recall this letter?

14          A.   I have a vague recollection of it now.

15          Q.   Do you recall the issues that were being  
16   discussed in the letter?

17          A.   Not specifically. But I can see what's in the  
18   letter.

19          Q.   How did you go about answering Mr. Scott's  
20   letter? What was the process?

21          A.   I assigned a member of my staff, Mr. Krabbenhoft,  
22   to research the permit to identify what was in the permit  
23   that would be responsive to these questions.

24          Q.   And what did he do?

25          A.   I don't know how he went about his research.

1 Q. Did you give him instruction about how to go  
2 about his research?

3 A. No.

4 Q. And what is -- what is his job title?

5 A. I believe he was an engineering specialist.

6 Q. And why was he the person you assigned to look at  
7 this issue?

8 A. I don't recall exactly why he was assigned.

9 Q. What special expertise did he bring to looking at  
10 this issue?

11 A. I don't recall why he was assigned.

12 Q. Did you confirm that the answers in this letter  
13 were complete and correct?

14 A. I looked at the information that was provided and  
15 that's what we sent.

16 Q. Did you do anything to ensure that the answers  
17 were truthful answers to the Peelers?

18 A. I don't recall what went into the generation of  
19 this letter. I'm sorry.

20 Q. But you signed it?

21 A. Because a member of my staff had conducted the  
22 research, and the information provided there was  
23 responsive.

24 Q. Were you confident in his efforts?

25 A. Yeah.

1           Q.   Okay.  So let's talk about this first issue that  
2   Mr. Scott asked about which is under number 1, says, "The  
3   change from overburden mixed soil to haul back preserved  
4   soil," and he wants to understand why that happened or --  
5   or where that happened on the Peeler Ranch.  And can you  
6   tell me what the response explains?

7                   MS. FREEL:  Objection, form.

8                   MR. AXE:  Objection, form.

9           A.  I don't know what Mr. Scott's letter asked for or  
10   not.  What I'm seeing here is that the response was  
11   provided to show where that -- when that -- not when, but  
12   on the -- lying on the ground, when that change had  
13   occurred going from mixed overburden to haul back.

14          Q.  Okay.

15          A.  And the -- the bond maps were a map that depicted  
16   that line.

17          Q.  So I'm going to provide you with a little bit  
18   larger copies than I'm providing everyone else of the  
19   three bond maps that were included in the letter because  
20   they are a little difficult to see.

21                   MS. WHITTLE:  Can we mark these exhibits?

22                   (Exhibit Nos. 77-79 were marked.)

23                   MS. WHITTLE:  So I'm handing counsel first  
24   Exhibit 77 which is also found at Peeler 0034126.

25                   MR. AXE:  0034.

1 MS. WHITTLE: 126.

2 MR. AXE: 126.

3 MS. WHITTLE: Yes, sir. The Bates numbers  
4 didn't show up on the map. And I am handing Exhibit  
5 No. 77 to Mr. Wootton. I'm also handing Mr. Wootton  
6 Exhibit No. 78 and 79 and you can spend some time putting  
7 those together maybe.

8 Q. (BY MS. WHITTLE) So Exhibit No. 78 is Bates  
9 number Peeler 0034125 and then Exhibit No. 79 is Peeler  
10 0034124. Have you ever seen this map before?

11 MR. AXE: Just for -- just for clarification  
12 on the record, the Peeler number -- the Bates numbers  
13 you're giving us for these maps, these maps were not  
14 provided with the April 2, 2018 letter?

15 MS. WHITTLE: They were provided with the  
16 letter. These are the original maps. And they are quite  
17 large and so we are keeping the originals. We have  
18 produced copies in discovery and I -- we made larger  
19 copies for the witness to review because it's a little  
20 easier to see. But I can show you these are very large  
21 maps.

22 MR. AXE: Right. I am raising my question  
23 because it is not included as an attachment to the letter  
24 itself, Exhibit 76.

25 MS. WHITTLE: These were included as

1 attachments to the letter.

2 Q. (BY MS. WHITTLE) Mr. Wootton, are these the maps  
3 that are referred to in the answer at number 1?

4 A. It appears so.

5 Q. And have you ever reviewed those maps?

6 A. I may have.

7 Q. So what did the person who prepared this response  
8 for you explain about those maps?

9 A. I don't recall what that discussion was.

10 Q. Can you read the map? Do you understand what's  
11 on it?

12 A. In general terms, yes.

13 Q. And so does the map depict certain areas where  
14 selective haul back was used?

15 A. It shows areas of bond coverage that  
16 differentiates between areas that were mined before and  
17 after the haul back were mined as indicated by the  
18 hatching on the map.

19 Q. So was there a specific point in time when the  
20 haul back requirement changed?

21 A. I assume so.

22 Q. And the hatch marks delineate where that happened  
23 on the ground at the mine site?

24 A. I -- I would assume so. I don't know that for  
25 certain. It happened prior to my tenure in permitting.



1 Q. The change from selective haul back to mixed  
2 overburden happened prior to 2001?

3 A. Yes.

4 MS. FREEL: Objection, form. Sorry.

5 MS. WHITTLE: What is the basis for your  
6 objection?

7 MS. FREEL: We can repeat it. But I read  
8 that that flipped on this letter versus what you said.

9 MS. WHITTLE: I just said that the change  
10 from selective haul back to mixed overburden occurred  
11 before Mr. Wootton's tenure which started in 2001 and he  
12 confirmed that was correct. Do you withdraw objection?

13 MS. FREEL: No.

14 MS. WHITTLE: What is the basis for your  
15 objection?

16 MS. FREEL: The letter says the change went  
17 from haul back -- from overburden mixed -- mixed soil to  
18 haul back reserve topsoil and it seems to me that you  
19 reversed those two.

20 Q. (BY MS. WHITTLE) Mr. Wootton, was the change  
21 made from mixed soil to haul back or the other way around?

22 A. My recollection is that it went from mixed  
23 overburden to haul back material.

24 Q. So originally in the permit everything prior to a  
25 certain date was done mixed overburden?

1           A. I don't know what happened prior to -- I don't  
2 know what was in the permit prior to my -- my involvement.

3           Q. So how does this map answer the question from  
4 Mr. Scott?

5           A. I don't know what thinking went into this being  
6 responsive.

7           Q. But this was your response to the landowner  
8 concerns?

9           A. It was a response prepared by my staff.

10          Q. But you don't know whether it's responsive?

11          A. I don't recall the conversations that occurred to  
12 determine the responsiveness.

13          Q. Okay. So what -- let's move to number 2. What  
14 document allows SMECI, which is San Miguel Electric  
15 Cooperative Incorporated, to bury ash in the mine on the  
16 Peeler property? So what was done to answer that  
17 question?

18          A. Based on reading the letter, a reference to or a  
19 letter from Mr. Peeler was -- was found from a long time  
20 back or very early in the permitting process where  
21 Mr. Peeler had agreed to the placement of the ash and it  
22 was in the permit.

23          Q. There was a letter where Mr. Peeler agreed --

24          A. I would assume so, based on this letter.

25          Q. And have you seen that letter?

1 A. I don't recall seeing that letter.

2 Q. Okay. So let's move to number 3. TCEQ's permit  
3 and/or recommendation for burying ash in the mines. Is it  
4 your understanding that TCEQ has issued a permit for ash  
5 disposal in the mines?

6 A. It would be whatever is referenced here is what  
7 we found in the permit.

8 Q. Does the Railroad Commission permit ash disposal  
9 or does TCEQ register solid waste disposal?

10 A. In this permit, there was a registration for  
11 solid waste.

12 Q. Does the Railroad Commission govern ash disposal?

13 A. TCEQ issues that permit. Not the Railroad  
14 Commission.

15 Q. So it's TCEQ's registration for solid waste  
16 disposal that governs ash disposal at the San Miguel  
17 lignite mine?

18 MS. FREEL: Objection, form.

19 A. I don't know how TCEQ administers or enforces  
20 their permits.

21 Q. (BY MS. WHITTLE) Is ash disposal within the  
22 Railroad Commission regulatory purview?

23 MR. AXE: Objection, form.

24 MS. FREEL: Objection, form.

25 A. Not that I'm aware of.

1 Q. (BY MS. WHITTLE) Is ash disposal within the TCEQ  
2 regulatory purview?

3 MR. AXE: Objection, form.

4 A. I don't know.

5 Q. (BY MS. WHITTLE) Why does the Railroad  
6 Commission ask where ash is going to be disposed?

7 A. I don't know the genesis of that being in the  
8 permit.

9 Q. Is that something that is required by regulation?

10 A. I don't know that.

11 MR. AXE: Objection, form.

12 A. I don't recall that. I don't know.

13 Q. (BY MS. WHITTLE) Are there other mines in the  
14 State of Texas where ash is placed back in pits?

15 A. I believe other mines do, but I don't know  
16 specifics.

17 Q. Can you name one --

18 MS. FREEL: Objection, form.

19 Q. (BY MS. WHITTLE) -- where that happens?

20 A. Not off the top of my head.

21 Q. So let's move to number 4, the agreed upon  
22 restoration plan. What did you or your staff do to answer  
23 that question?

24 A. It appears that the permit was researched and  
25 copies of the documents relating to approval of those

1 areas was provided.

2 Q. And then for number 5, the location of all buried  
3 ash, what was done to answer that?

4 A. That was providing a map that was provided by the  
5 company that documented where they had placed the ash.

6 Q. And then for number 6, the areas that have been  
7 released from bond for phase 1, 2, or 3, what did you do  
8 to answer that?

9 A. It appears that the bond map was provided  
10 relative to Question No. 1 that also reflected bond  
11 release.

12 Q. So what does the bond release map depict?

13 A. It shows areas that have been released from some  
14 phase of bond on here, in the legend there is a -- it's an  
15 orange or red line, the second from the bottom on the --  
16 on the legend, those correspond to these orange or red  
17 boundaries that are on the map, each of which has a  
18 alphanumeric designator which corresponds to the table  
19 that's in the upper left of each map that identifies the  
20 approval dates and acreage for each phase of bond release  
21 for that block.

22 Q. So the table for that date shows what acreage has  
23 reached phase 1, 2 or 3 bond release; is that correct?

24 A. It appears so.

25 Q. Okay. We will set those to the side.

1 All right. I'd like to turn within the  
2 letter to page that's identified Peeler 0034133, and  
3 actually before we do that, is now a good time for lunch  
4 break. Okay.

5 MS. WHITTLE: We'll go off the record.

6 VIDEOGRAPHER: We're going off the record at  
7 11:58 a.m.

8 (Brief recess.)

9 (Exhibit Nos. 80-89 were marked.)

10 VIDEOGRAPHER: We're on the record at  
11 1:10 p.m.

12 Q. (BY MS. WHITTLE) Okay. Mr. Wootton, I'm going  
13 to hand you what's been marked Exhibit 80.

14 A. I'll clip this back.

15 Q. Well, we're going to go through it.

16 A. Okay. I just didn't want to mess up any pages.

17 Q. And this has the Bates number Peeler 0034127.  
18 Can you identify -- this was included in your packet as  
19 well. Can you identify this document?

20 A. It appears to be the post-mine land use map.

21 Q. And what does it depict?

22 A. It depicts the areas of the various post-mine  
23 land uses within the permit area.

24 Q. And so what are the various particular post-mine  
25 land uses that you see?

1 A. I see pasture, IC, IC exempt.

2 Q. Can you tell me what IC exempt means?

3 A. So IC exempt is -- it's still industrial  
4 commercial. It meets all the same requirements. That was  
5 a relatively new -- relatively new study. It's not a  
6 different land use. That designation is used for bond  
7 calculation purposes. Because the rules said that a third  
8 party impact isn't required to be covered by the bond.  
9 And so that was a way for calculation purposes to be able  
10 to distinguish between industrial commercial that the  
11 permittee had control over and those that they didn't.  
12 Typically oil and gas pads, things of that nature.

13 Q. So the IC exempt would not be calculated for the  
14 purposes of determining a bond amount?

15 A. That's right.

16 Q. But all the magenta and orange on this map that  
17 are delineated IC area and IC exempt area are to be  
18 reclaimed to the industrial commercial standard?

19 A. Correct.

20 Q. And is this the most current conceptual post-mine  
21 land use that was available at the time you sent the  
22 letter?

23 A. I would assume so since it was included.

24 Q. Okay. Now, I'd like to look at what's been  
25 marked Exhibit 81. And this in particular is difficult to

1 see on the reproduction so I can show counsel the original  
2 map if that is helpful. But it was Peeler 0034412. And  
3 it is referred to in your letter.

4 MS. FREEL: Just to clarify, the others ones  
5 that were 12 something, it's just 12 at the end?

6 MS. WHITTLE: I have 003412. It was the  
7 last page in the packet.

8 MR. AXE: Exhibit 80 was 34127 or 427?

9 MS. WHITTLE: 34127 was Exhibit 80.

10 Q. (BY MS. WHITTLE) Okay. Can you explain what  
11 this map depicts?

12 A. It's a map depicting ash placement within the  
13 permit area.

14 Q. And who delivered this map to -- or who prepared  
15 the map?

16 A. I don't know.

17 Q. Does it identify it on the map?

18 A. It says drawn by J. Jeffries.

19 Q. And who is he with?

20 A. I don't know.

21 Q. Okay. Doesn't identify an engineering company or  
22 a mining company on the map?

23 A. The only indication of anything is the Kiewit  
24 logo and San Miguel lignite mine.

25 Q. Okay. So how are the ash disposal areas depicted



1 on that map? And again, it's really hard to see on the  
2 reproductions, but --

3 A. There are lines that show each year what ash was  
4 placed, where ash was placed for that year.

5 Q. And is that sort of the light gray color that you  
6 see?

7 A. Yes.

8 Q. And each box has a -- has a year on it?

9 A. It appears so, yes.

10 Q. And so is that -- is it your understanding that  
11 in the Railroad Commission files, this map shows where ash  
12 was placed in the area A and E over the years?

13 A. To my understanding.

14 Q. And again, is this something -- sorry.

15 A. That's okay, I've had that before, too.

16 Q. Is this something the Railroad Commission  
17 requires under the permit to know where the ash is placed?

18 A. I don't recall the genesis of the map.

19 Q. Okay. But you testified that the Railroad  
20 Commission does not permit ash disposal; is that correct?

21 A. Not the disposal itself.

22 Q. But where it is disposed?

23 A. It's --

24 MR. AXE: Objection, form.

25 Q. (BY MS. WHITTLE) What do you mean, not the

1 disposal itself?

2 A. Well, the -- the Railroad Commission is not a  
3 solid waste agency, to my understanding. This was -- for  
4 whatever reason, this map was submitted annually or to --  
5 to some degree and it depicted where the map was -- where  
6 the ash was placed.

7 Q. Okay. Now, I'd like to turn back to that -- the  
8 larger packet that came with your letter. And I would  
9 like to turn to -- if you look at the bottom it says  
10 "Peeler 0034142."

11 A. Okay.

12 Q. What is at the bottom of this document, the last  
13 paragraph and then the signature line?

14 A. It appears to be a statement of the information  
15 being true to the best of the signatory's understanding.

16 Q. Okay. And so this was signed by who?

17 A. I can't read the signature. It indicates in the  
18 paragraph above that it was Michael J. Massey.

19 Q. And is Michael Massey an attorney for San Miguel?

20 A. At this point I don't know. I know he  
21 represented them in the past.

22 Q. Did he submit permit documents on behalf of San  
23 Miguel to the Railroad Commission when you were there?

24 A. Probably. I don't recall.

25 Q. So this certification, is this certification

1 required by the Railroad Commission in permit applications  
2 that -- that everything complies with regulations and it's  
3 true and correct?

4 A. Yes.

5 Q. And if this certification wasn't in the permit  
6 application, would the Railroad Commission require it?

7 A. Yes.

8 Q. And if this was a false certification, would that  
9 keep the Railroad Commission from granting the permit?

10 MS. FREEL: Objection, form.

11 A. I don't really have an answer for that. But it  
12 speculates that somebody would do something, falsify  
13 something. I don't have any way of knowing that they did.

14 Q. (BY MS. WHITTLE) I'm not saying that anyone did.  
15 I'm asking if the Railroad Commission learned that the  
16 certification was false, would that impact the Railroad  
17 Commission's decision to issue the permit?

18 MS. FREEL: Objection, form.

19 A. I'm not familiar with that happening, so I don't  
20 know. I don't know what would happen.

21 Q. (BY MS. WHITTLE) But in your understanding, the  
22 certification needs to be true?

23 A. I would assume so.

24 Q. And so I would like to turn to page Peeler -- it  
25 starts at 0034170, 34170 and extends to the next page

1 34171. I would like you to start reading at deficiency  
2 number 128 and go to the next page, just read that and  
3 then let me know when you're ready.

4 A. Okay. Ready.

5 Q. Are you familiar with what's discussed in that  
6 deficiency number?

7 A. I don't recall what was discussed with that.

8 Q. Were you familiar with the area A seep and  
9 groundwater saturation concerns?

10 A. Not specific knowledge, no.

11 Q. General knowledge?

12 A. I know there were seeps that had developed at the  
13 ponds. I was aware of that. But I -- I didn't review  
14 that information.

15 Q. So what are you aware of? You're aware of seeps  
16 at the ponds?

17 A. Yes.

18 Q. What ponds?

19 A. I was aware there were seeps at the mine. I  
20 couldn't commit to that I knew they were, whatever ponds  
21 listed here, 7, 8 -- 7, 10, and 11. I -- I couldn't point  
22 to those seeps on the map today.

23 Q. Are you aware that the Railroad Commission was  
24 investigating seeps at the ponds?

25 A. I don't recall the details of whether they may or

1 may not have been. I don't know.

2 Q. So can we turn to page 34179.

3 A. Okay.

4 Q. At Paragraph 2.1, if you read along with me it  
5 says, "A series of groundwater investigations have been  
6 conducted within area A from June 2003 through  
7 September 2004 to evaluate the occurrence and quality of  
8 post-mine spoil groundwater. These investigations focused  
9 on the north end of area A."

10 So were you aware that investigations  
11 started in area A in June 2003?

12 A. I -- it says that there. I don't recall  
13 specifics regarding that, no.

14 Q. Do you have any reason to believe that's  
15 incorrect?

16 A. Based on this, looks like the company -- I don't  
17 have any reason to believe it's incorrect, no.

18 Q. Okay. Can you turn to page 34190?

19 A. Okay.

20 Q. So this document that you-all sent to us  
21 answering the questions that Mr. Scott presented concludes  
22 at the top bullet that wide spread saturation of reclaimed  
23 spoil throughout area A has occurred. Were you aware of  
24 that problem, that wide spread saturation of the reclaimed  
25 spoil throughout area A has occurred?

1 MS. FREEL: Objection, form.

2 A. Pardon me. I'm not familiar with that. I didn't  
3 review the groundwater.

4 Q. (BY MS. WHITTLE) Okay. Was your staff familiar  
5 with this?

6 A. I don't know.

7 Q. Since this is something that you sent to us or  
8 sent to Mr. Scott, would it be fair to say your staff was  
9 familiar with this?

10 MS. FREEL: Objection, form.

11 MR. AXE: Objection, form.

12 A. Based on what I'm seeing here, this is a part of  
13 the permit and it would have been reviewed.

14 Q. (BY MS. WHITTLE) Okay. And then can you read  
15 the last bullet with me. It says, "As a result of  
16 elevated spoil water levels, seeps have developed at ponds  
17 7, 10, and 11. A potential exists for seeps to develop  
18 based on the groundwater elevations and bottom elevation  
19 of pond 3."

20 Were you aware that seeps had developed at  
21 those ponds identified?

22 MS. FREEL: Objection, form.

23 MR. AXE: Objection, form.

24 A. Not specifically, no.

25 Q. (BY MS. WHITTLE) Again, this -- was this

1 included in the Railroad Commission permit that was  
2 approved?

3 MS. FREEL: Objection, form.

4 MR. AXE: Objection, form.

5 A. It appears that that's what it looks like to me  
6 is part of the permit.

7 Q. (BY MS. WHITTLE) Okay. Do you recall when  
8 mining finished in area A?

9 A. No, I do not.

10 Q. Do you recall when mining finished on the Peeler  
11 Ranch?

12 MR. AXE: Objection, form.

13 A. No, I don't recall.

14 Q. (BY MS. WHITTLE) When you started working in the  
15 permits division, was mining still occurring on the Peeler  
16 Ranch?

17 MR. AXE: Objection, form.

18 A. I don't recall if it was or not.

19 Q. (BY MS. WHITTLE) I would like to turn to Peeler  
20 0034348.

21 A. 348 you said?

22 Q. 34348. What is this document?

23 A. Which, this page in particular?

24 Q. Yes. And you may -- might want to flip forward a  
25 little bit to see the heading. But these are the

1 documents you included with this as the answer to the  
2 question so --

3 A. It appears to be part of staff's technical  
4 analysis of the permit 11 after no revision application.

5 Q. Okay. So at the top of this page, there's a  
6 heading called "coal combustion product placement." And  
7 it says, "SMEC currently utilizes fly ash, flue gas  
8 desulfurization material and bottom ash collectively  
9 referred to as coal combustion products and mine pits in  
10 the permit 11 D area as authorized by TCEQ waste control  
11 order 02043, solid waste registration 31434."

12 Is that the solid waste registration that  
13 you have been referring to that controls ash disposal?

14 A. I would assume so.

15 Q. There also -- in the second paragraph it says,  
16 "When in full operation, San Miguel unit number 1 produces  
17 approximately 1,787,500 cubic yards of ash product  
18 annually."

19 And so my question to you is: Would you  
20 expect -- or are you aware of whether all of that ash was  
21 placed somewhere in the San Miguel mine?

22 A. I don't know.

23 MS. FREEL: Objection, form.

24 Q. (BY MS. WHITTLE) You don't know.

25 So I'd like to look back at Exhibit 81. If



1 I submit to you that the Peeler Ranch has not had mining  
2 on it since 2004, do you see any years on there subsequent  
3 to 2004 for ash disposal?

4 MR. AXE: Objection, form.

5 MS. FREEL: Objection, form.

6 A. Yes.

7 Q. (BY MS. WHITTLE) So where was the ash originated  
8 that was disposed on the Peeler Ranch after 2004?

9 MR. AXE: Objection, form.

10 MS. FREEL: Objection, form.

11 A. I don't know.

12 Q. (BY MS. WHITTLE) Well, were -- are you familiar  
13 with the Harrison Ranch?

14 A. Yes.

15 Q. Has mining occurred on the Harrison property?

16 A. Yes.

17 Q. Does San Miguel dispose of coal ash on the  
18 Harrison Ranch?

19 MR. AXE: Objection, form.

20 Q. (BY MS. WHITTLE) Does the permit allow disposal  
21 of ash on the Harrison Ranch?

22 A. I don't believe -- I don't believe it did as of  
23 the time I retired.

24 Q. So the ash that was burned -- burned at the  
25 plant, the ash byproducts that resulted from lignite being

1 burned at the plant, the lignite -- let me start over.

2 The lignite that originated on the Harrison  
3 property, was that disposed on the Peeler Ranch?

4 MR. AXE: Objection, form.

5 MS. FREEL: Objection, form.

6 A. I have no idea.

7 Q. (BY MS. WHITTLE) Was lignite that originated off  
8 track from the Peeler Ranch ever disposed on the Peeler  
9 Ranch?

10 MR. AXE: Objection, form.

11 MS. FREEL: Objection, form.

12 A. I don't know.

13 Q. (BY MS. WHITTLE) Does the Railroad Commission  
14 concern itself with whether ash that originated from off  
15 site is allowed to be disposed on another landowner's  
16 property?

17 MS. FREEL: Objection, form.

18 MR. AXE: Objection, form.

19 A. I don't know whether it does or not.

20 Q. (BY MS. WHITTLE) Did you ever concern yourself  
21 with that?

22 MR. AXE: Objection, form.

23 A. I did not.

24 Q. (BY MS. WHITTLE) I'd like to look at Peeler  
25 34350. There's a sentence at the top that says, "The use

1 of coal combustion residual products assist in achieving  
2 AOC by providing a critical additional volume of material  
3 that enhances AOC activities in several ways." And then  
4 it describes those.

5 Can you tell me what AOC is?

6 A. AOC stands for approximate original contour.

7 Q. When you were at the Railroad Commission, was it  
8 your position that ash disposal helps with AOC?

9 MS. FREEL: Objection, form.

10 MR. AXE: Objection, form.

11 A. I didn't have an opinion.

12 Q. (BY MS. WHITTLE) Have you ever read the National  
13 Academy of Sciences report on the dangers of mine fill  
14 with coal combustion residuals?

15 MS. FREEL: Objection, form.

16 MR. AXE: Objection, form.

17 A. No.

18 Q. (BY MS. WHITTLE) Have you ever received any  
19 training on that?

20 MS. FREEL: Objection, form.

21 MR. AXE: Objection, form.

22 A. Training on what?

23 Q. (BY MS. WHITTLE) On the National Academy of  
24 Science's study on coal combustion residual mine filling?

25 A. No.

1 Q. I'd like to turn to Peeler 04356.

2 A. 04?

3 Q. 04356.

4 A. I don't have a 04356. 34356?

5 Q. 34356.

6 A. Okay, I -- I misunderstood. I apologize.

7 Q. These are hard to figure out.

8 A. Down there.

9 Q. Okay. So the last paragraph says, "In areas A  
10 and E irrigation-type sprinklers will be used within the  
11 active ash placement areas to help control fugitive dust."

12 What is fugitive dust?

13 A. Fugitive dust is dust from the haul roads or  
14 disturbed areas that flies up in the air.

15 Q. And is there a risk of fugitive dust from the ash  
16 placement areas?

17 MS. FREEL: Objection, form.

18 A. I don't know whether there would be or not. It  
19 would be situationally dependent.

20 Q. (BY MS. WHITTLE) So did the Railroad Commission  
21 require that there were fugitive dust control measures in  
22 place in ash placement areas?

23 MR. AXE: Objection, form.

24 A. The rules require a fugitive dust control plan  
25 for the permit.

1 Q. (BY MS. WHITTLE) And so do the ash placement  
2 areas count for that?

3 MR. AXE: Objection, form.

4 A. They're within the permit.

5 Q. (BY MS. WHITTLE) So the next sentence says, "The  
6 water source will be from the end pits or retention ponds  
7 storing pit water. Water spray will be contained within  
8 the ash placement areas."

9 Did you -- so does this sentence mean that  
10 San Miguel is using water from the end pits for fugitive  
11 dust suppression on the ash piles?

12 MR. AXE: Objection, form.

13 MS. FREEL: Objection, form.

14 A. Based on the way that's written, I would assume  
15 so.

16 Q. (BY MS. WHITTLE) Okay. Has the Railroad  
17 Commission ever taken a position on whether end pit water  
18 can be used for fugitive dust --

19 MR. AXE: Objection, form.

20 Q. (BY MS. WHITTLE) -- suppression, while you were  
21 there?

22 A. I'm not aware of a position.

23 Q. Were there any concerns raised by the Railroad  
24 Commission about using end pit water for fugitive dust  
25 suppression --

1 MS. FREEL: Objection, form.

2 MR. AXE: Objection, form.

3 Q. (BY MS. WHITTLE) -- while you were there?

4 A. I don't recall.

5 Q. So can we look at Peeler 034364.

6 MS. FREEL: Say it again.

7 MS. WHITTLE: 34364.

8 Q. (BY MS. WHITTLE) There's a table it says, "the  
9 summary of reclamation cost." Is this something that  
10 falls within your area of expertise, the reclamation cost  
11 analysis?

12 A. Yes.

13 Q. Yes. What does this seep area sampling mean?

14 A. Specific to this, I don't know.

15 Q. Is sampling of a seep area normally included in a  
16 reclamation cost summary?

17 MS. FREEL: Objection, form.

18 A. It would be common practice if there's an  
19 identified seep to account for it in the cost estimate.

20 Q. (BY MS. WHITTLE) So if there wasn't an  
21 identified seep, you wouldn't include that in a bond  
22 summary -- a -- a reclamation cost summary; is that  
23 correct?

24 A. I believe so.

25 Q. Did San Miguel ever provide the Service Mining

1 Reclamation Division their own mine closure estimates when  
2 you were there?

3 A. I believe they did.

4 Q. Were you aware that -- so -- so what do you think  
5 they submitted to you?

6 A. I don't recall.

7 Q. Do you ever ask for mine closure studies with  
8 costs from the mining operator?

9 A. What do you mean by mine closure study?

10 Q. What it would cost to actually close and reclaim  
11 the mine?

12 A. The rules require that the applicant include a  
13 cost -- reclamation cost estimate as part of their  
14 application and it should account for all the -- the  
15 various reclamation milestones.

16 Q. So if a -- did you ever have occasion to learn  
17 that a company's mine closure estimates far exceeded the  
18 estimate they provided to SMRD staff?

19 MS. FREEL: Objection, form.

20 MR. AXE: Objection, form.

21 A. I don't recall anything of that nature.

22 Q. (BY MS. WHITTLE) Would it have concerned you if  
23 a company's own reclamation cost estimates far exceeded  
24 the amount they provided to the SMRD staff for the  
25 reclamation bond?

1 MS. FREEL: Objection, form.

2 MR. AXE: Objection, form.

3 A. Our staff was reviewing the permit application as  
4 it was submitted and evaluating the cost that we believed  
5 necessary. I -- to answer that question would be  
6 speculative on my part.

7 Q. (BY MS. WHITTLE) Well, was it important to you  
8 that the mine closure costs submitted were correct?

9 A. As correct as possible.

10 Q. So if it had been incorrect, you wouldn't have  
11 approved the bond amount?

12 MS. FREEL: Objection, form.

13 MR. AXE: Objection, form.

14 A. I need to qualify that. The bonds are  
15 regularly -- the bond instruments are regularly higher  
16 than the cost estimates, so the cost estimate being less  
17 wouldn't have been a problem. If the cost estimate that  
18 we calculated exceeded the posted performance bond  
19 instrument, we would have required an increase in the  
20 instrument.

21 Q. (BY MS. WHITTLE) So if the company's own mine  
22 closure costs demonstrated that reclamation would cost  
23 three to four times the amount of the current posted bond,  
24 is that something the Railroad Commission would have  
25 wanted to know?



1 MS. FREEL: Objection, form.

2 MR. AXE: Objection, form.

3 A. I can't answer that. I would be speculating. I  
4 never saw that.

5 Q. (BY MS. WHITTLE) Well, if the company -- are the  
6 reclamation costs supposed to be accurate and account for  
7 all of the costs of reclaiming a mine area?

8 MR. AXE: Objection, form.

9 MS. FREEL: Objection, form.

10 A. Yes.

11 Q. (BY MS. WHITTLE) And that was your area of  
12 expertise to determine what reclamation costs would be,  
13 correct?

14 A. Correct.

15 Q. And the bond amount that's set is somewhat higher  
16 than those reclamation costs?

17 MS. FREEL: Objection, form.

18 A. It can be.

19 Q. (BY MS. WHITTLE) How is the bond amount set?

20 A. The performance bond on file with the commission,  
21 accepted by the commission, had to be at least in the  
22 amount of the accepted reclamation cost estimate or more.

23 Q. What were the most important goals of the Surface  
24 Mining Reclamation Division as you understood them during  
25 your time there?

1           A. Well, the agency had three goals that were put  
2 out and that was operational excellence, customer service,  
3 and safety.

4           Q. And was permit review and issuance a goal?

5           A. Permit review was a goal. Permit issuance was  
6 based on whether it was -- whether it met the requirements  
7 of the rules or not.

8           Q. So when I refer to backlog, I'm referring to  
9 permit review in this question. Was clearing backlogs of  
10 permit review a goal while you were there?

11          A. Yes.

12          Q. And was clearing backlogs a challenge given the  
13 budget of the service mining reclamation division?

14                 MS. FREEL: Objection, form.

15          A. At times.

16          Q. (BY MS. WHITTLE) So was the budget ever a  
17 constraint in performing the review you needed to perform?

18                 MS. FREEL: Objection, form.

19          A. Not in my opinion.

20          Q. (BY MS. WHITTLE) Well, how might the budget  
21 impact the permit review process?

22          A. Staffing levels.

23          Q. Were you part of any efforts to seek more funds  
24 for the Surface Mining Reclamation Division?

25          A. I participated in budget discussions. But that

1 was the extent.

2 Q. And over the years, were you able to come up with  
3 ways to help streamline the permit review process?

4 A. Uh-huh. Yes.

5 Q. And what ways did you help streamline the permit  
6 review process?

7 A. The biggest one was to look for redundancies in  
8 the process to ensure that we could -- hit all the points  
9 we needed to hit and make sure that each part of the rules  
10 was assessed. But we didn't do double work.

11 Q. Why is it important for the bond amount to be set  
12 at an appropriate level?

13 A. Because that's what the rules require.

14 Q. But what's the consequence of not setting it at  
15 an appropriate level?

16 A. I'd -- I'd be speculating.

17 Q. Well, what would happen if the State of Texas  
18 called on a bond and there wasn't enough money there to  
19 actually do the work?

20 MS. FREEL: Objection, form.

21 MR. AXE: Objection, form.

22 Q. (BY MS. WHITTLE) Would the work get done?

23 MR. AXE: Objection, form.

24 A. I don't know. It hasn't happened.

25 Q. (BY MS. WHITTLE) So I would like to look at

1 Peeler 0034382.

2 A. 82?

3 Q. Yes, sir.

4 A. Okay.

5 Q. Can you tell me what this is?

6 A. It appears to be a table listing the physical  
7 characteristics of sedimentation ponds.

8 Q. What areas within the San Miguel lignite mine is  
9 the Peeler Ranch located? Is it in area A?

10 MR. AXE: Objection, form.

11 A. I don't know that for certain.

12 Q. (BY MS. WHITTLE) Is it in area E?

13 MR. AXE: Objection, form.

14 A. I'm not certain exactly where the Peeler property  
15 falls.

16 Q. (BY MS. WHITTLE) Well, let's look at the  
17 reclamation date for all of these ponds that are listed on  
18 this table. What's the latest date on this table for  
19 reclamation of ponds?

20 A. On this it shows 2019 -- I'm sorry. There's a  
21 2020.

22 Q. What is the current year?

23 A. 2019.

24 Q. So are any of those -- were any of those ponds  
25 reclaimed when you left the Railroad Commission?

1 MS. FREEL: Objection, form.

2 MR. AXE: Objection, form.

3 A. I don't know the answer to that.

4 Q. (BY MS. WHITTLE) Would you have expected that  
5 all of those ponds would be reclaimed by the date in this  
6 table that was submitted --

7 MS. FREEL: Objection, form.

8 MR. AXE: Objection, form.

9 Q. (BY MS. WHITTLE) -- for their permit?

10 MR. AXE: Objection, form.

11 A. Depending on the usage. I don't know whether  
12 they would or not.

13 Q. (BY MS. WHITTLE) Is it important for the  
14 Railroad Commission to be able to rely on reclamation  
15 dates that are submitted by mine permit holders?

16 MS. FREEL: Objection, form.

17 MR. AXE: Objection, form.

18 A. Dates in the permit are part of the plan. That  
19 if something changed, they would need to update the  
20 permit.

21 Q. (BY MS. WHITTLE) Okay. So I would like to turn  
22 to Peeler 04 -- sorry. 034398. So Peeler 0434398.

23 A. Okay.

24 Q. And if you could read under non substantive  
25 comment 15, so and then turn to -- you have to go to the

1 next page to see what the non substantive comment number  
2 15 was. But it's 0034401. If you read the last paragraph  
3 extending to the top of 0034402.

4 So what was the concern that staff raised in  
5 this non substantive comment?

6 A. I don't know for certain. It appears they were  
7 just looking for a copy of some documentation.

8 Q. What was the documentation supposed to tell them?

9 MS. FREEL: Objection, form.

10 Q. (BY MS. WHITTLE) What were they asking for?

11 A. Appears they were asking for documentation of  
12 landowner consultation and consent for lease properties  
13 where ash has been placed previously or would be placed in  
14 the future.

15 Q. And so what was the answer for the Peeler Ranch  
16 for non substantive comment number 15?

17 A. Appears that some additional documentation was  
18 provided.

19 Q. Well, it states in the response, "Amendment  
20 number 2 to the lease regarding AM Peeler, Junior Ranch as  
21 recorded on October 6, 1975 in volume 421, pages 279 to  
22 288, deed records Atascosa County, Texas provides the  
23 agreement for ash placement between the lessor and lessee  
24 on AM Peeler, Junior Ranch tracts, including areas where  
25 ash was placed in 1980 and in the expansion area in 1993."

1                   So does that appear to be the answer that  
2                   San Miguel provided that ash disposal was allowed under  
3                   amendment 2 to the lease.

4                   MR. AXE:   Objection, form.

5                   MS. FREEL:   Objection, form.

6                   A.   I don't know for certain.   I don't -- I don't  
7                   believe I reviewed this.   I don't -- I don't know.

8                   Q.   (BY MS. WHITTLE)   Well, you provided this letter  
9                   in response to the landowner concerns, these are all  
10                  Railroad Commission documents.   Did you review these  
11                  documents before you sent them to the landowner?

12                  A.   I discussed what my staff had found.   I did not  
13                  go -- that I recall, go every single word, no.

14                  Q.   Well, can we rely on this document from the  
15                  Railroad Commission that the response from San Miguel to  
16                  the question, what authorized ash disposal on the Peeler  
17                  Ranch was this amendment 2 to the lease?

18                  MR. AXE:   Objection, form.

19                  MS. FREEL:   Objection, form.

20                  A.   I would assume so.

21                  Q.   (BY MS. WHITTLE)   Is it important that the  
22                  answers in these responses to deficiency notices be  
23                  something the Railroad Commission can rely on in the  
24                  permit?

25                  MR. AXE:   Objection, form.

1 MS. FREEL: Objection, form.

2 A. Our goal would be to be as accurate as we could.  
3 Again, this is a property issue, a lease issue for which  
4 the Railroad Commission did not have jurisdiction.

5 Q. (BY MS. WHITTLE) That's why it's considered a  
6 non substantive comment?

7 A. I don't know for certain why that distinction was  
8 made.

9 Q. And so did the -- to your knowledge, did the  
10 Railroad Commission go read amendment 2, which is recorded  
11 in Atascosa County?

12 MS. FREEL: Objection, form.

13 MR. AXE: Objection, form.

14 A. I don't know.

15 Q. (BY MS. WHITTLE) Did you read amendment --  
16 amendment 2?

17 A. I don't recall ever reading that, no.

18 MS. WHITTLE: Can we go off the record for  
19 just a second?

20 VIDEOGRAPHER: Going off the record at  
21 1:53 p.m.

22 (Discussion off the record.)

23 VIDEOGRAPHER: We're on the record at  
24 1:55 p.m.

25 Q. (BY MS. WHITTLE) Okay. I would like to turn to



1 Peeler 0034407. Could you read -- would tell me what this  
2 document is?

3 A. 4407?

4 Q. Yes.

5 A. It appears to be part of an errata responding to  
6 comments.

7 Q. So can you read comment number 6 and then the  
8 response?

9 A. Okay.

10 Q. Okay. So what is this comment requesting of San  
11 Miguel?

12 MR. AXE: Objection, form.

13 MS. FREEL: Objection, form.

14 A. It appears it's asking for a copy of amendment 2  
15 to the lease or other documentation.

16 Q. (BY MS. WHITTLE) And what's at issue?

17 A. I don't know for certain. I didn't review this.

18 Q. So this was attached to the letter you provided  
19 to Mr. Scott in response to his questions. The comment  
20 states, if you read along with me, The proposed  
21 topographic and post-mine land use changes from  
22 pastureland to industrial commercial occur on 36 tracts  
23 owned by GA and AM Peeler or by SMECI. An approved permit  
24 number 11 F, supplement number 4, SMECI indicates that in  
25 amendment 2 to the Peeler lease, the Peeler's agree to IC

1 as an alternative postmine land use. San Miguel or SMECI  
2 must provide a copy of this amendment to lease or indicate  
3 where copy is contained in the approved permit and provide  
4 a copy of the consultation with Mr. AM Peeler that  
5 documents his agreement to the proposed provisions which  
6 identifies the proposed affected tracts by narrative or by  
7 map, et cetera.

8 So the response from San Miguel -- well,  
9 first, I have a question about that. This -- this comment  
10 suggests that the consultation letter with the landowner  
11 must indicate the landowner's agreement to the post-mine  
12 land use change. I understood your testimony earlier to  
13 say that all that is required is consultation, not  
14 agreement.

15 Is it -- was it your understanding when you  
16 were at the Railroad Commission that consultation and  
17 agreement was necessary to change a post-mine land use or  
18 just consultation?

19 A. To clarify what I said earlier, I believe the  
20 rules require consultation. But that doesn't necessarily  
21 require consent. I don't know why this is written the way  
22 it's written. I didn't write it.

23 Q. So the response from San Miguel states that, "The  
24 surface of the Peeler property will be reclaimed as  
25 pastureland, the IC portion will be the fill beneath the

1 property."

2 Is that possible, can you have two post-mine  
3 land uses on the same tract?

4 MR. AXE: Objection, form.

5 MS. FREEL: Objection, form.

6 A. I don't know how this came to be. I don't know.

7 Q. (BY MS. WHITTLE) Well, was it your practice at  
8 the Railroad Commission to have one post-mine land use  
9 above the surface and a second post-mine land use below  
10 the surface?

11 A. I don't know.

12 Q. You don't know whether that was your practice  
13 when you were there?

14 MR. AXE: Objection, form.

15 A. I was not a reviewer of post-mine land uses. I  
16 don't know what went into those reviews.

17 Q. (BY MS. WHITTLE) So you don't know one way or  
18 the other whether it's possible to have two different  
19 post-mine land uses on a tract?

20 MR. AXE: Objection, form.

21 A. Correct.

22 Q. (BY MS. WHITTLE) How would you meet the  
23 reclamation requirements if you have a different post-mine  
24 land use underneath the ground than you have for above the  
25 ground?

1 MR. AXE: Objection, form.

2 A. I don't know.

3 Q. (BY MS. WHITTLE) So it says, "The attached  
4 landowner consultation letter addresses the approval of  
5 the landowner to use the final pit on his property as ash  
6 disposal. The amendment 2 contains confidential lease  
7 information and cannot be included in a document that will  
8 be public information."

9 So was it of interest to the Railroad  
10 Commission that previously San Miguel had identified a  
11 publicly recorded lease document and now they're refusing  
12 to turn over a publicly recorded lease document?

13 MS. FREEL: Objection, form.

14 MR. AXE: Objection, form.

15 A. I don't know.

16 Q. (BY MS. WHITTLE) Does that seem strange to you?

17 MS. FREEL: Objection, form.

18 MR. AXE: Objection, form.

19 A. I can't answer that. That's speculative.

20 Q. (BY MS. WHITTLE) Well, so there's -- there are  
21 two letters that are included in the filing you sent us.  
22 Peeler 0034408. Can you review this letter?

23 What is the date of this letter?

24 A. September 21, 1990.

25 Q. Do you know what this letter is?

1           A. It appears to be some sort of documentation of  
2           some agreements.

3           Q. And was it submitted to the Railroad Commission  
4           as part of a permit application?

5           A. I don't know that.

6                     MR. AXE: Objection, form.

7           Q. (BY MS. WHITTLE) Well, again, you sent us this  
8           packet.

9           A. As I stated --

10                    MR. AXE: Objection, form.

11           A. As I stated before, I was in a supervisory role.  
12           I tasked a staff member capable of reviewing the files, to  
13           look -- to find this information, and this is what was  
14           discovered.

15           Q. (BY MS. WHITTLE) So if it was in the file  
16           someone submitted it to the Railroad Commission; is that  
17           correct?

18                    MR. AXE: Objection, form.

19           A. I would assume to.

20           Q. (BY MS. WHITTLE) Okay. So let's look at number  
21           5 A, agreed to. So what it -- that says, "Use final pits  
22           in the dogleg area for ash disposal with 10 feet of cover  
23           of overburden material plus one foot of topsoil."

24                    Does that say anything about changing the  
25           post-mine land use from pastureland to industrial

1 commercial?

2 MR. AXE: Objection, form.

3 MS. FREEL: Objection, form.

4 A. I don't know the context of this letter. I don't  
5 know what it was intended to do.

6 Q. (BY MS. WHITTLE) But it is what you provided in  
7 the answer to how the post-mine land use was changed,  
8 correct?

9 MR. AXE: Objection, form.

10 A. Correct.

11 Q. (BY MS. WHITTLE) All right. So the other letter  
12 that you submitted to us was September 17, 2013, that's  
13 the date of the letter and it's Peeler 034410. The first  
14 question I have for you about this is, can you look at the  
15 front and back of this letter. Is this in color or black  
16 and white?

17 MS. FREEL: Objection, form.

18 A. The copy I have is in black and white.

19 Q. (BY MS. WHITTLE) Can you read the letter for me  
20 and let me know when you're ready?

21 A. Okay.

22 Q. Now, I'd like you to keep that in mind and I'm  
23 going to hand you what's been marked Exhibit 84. Can you  
24 tell me what that document is?

25 A. Appears to be a copy of the same letter.

1 Q. And is that letter in black and white or in  
2 color?

3 A. It's in color.

4 Q. So what does this letter agree to?

5 A. Appears it's agreeing to a post-mine land use  
6 exchange.

7 Q. On the entire Peeler Ranch?

8 MR. AXE: Objection, form.

9 MS. FREEL: Objection, form.

10 A. I don't know which tracts encompass the entire  
11 Peeler Ranch, I don't know.

12 Q. (BY MS. WHITTLE) Well, let's read this together.  
13 "Dear Mr. Peeler, San Miguel Electric Cooperative, Inc.  
14 Has prepared this notice to inform you that a portion of  
15 your property within the above-referenced tracts of the  
16 San Miguel lignite mine needs to be revised from a  
17 post-mine land use of pastureland to an industrial  
18 commercial land use. This change is in result of the  
19 construction of oil and gas pads and in facilitating  
20 roadways. Once approved, these areas will be subject to  
21 performance standards developed by the Railroad Commission  
22 of Texas for industrial commercial post-mine land use.  
23 The areas for the -- proposal for this change are  
24 identified in red on the attached map."

25 When you look at the color version of the

1 map, you'll see there are some small areas that are in  
2 red. And I would like you to look at that and compare it  
3 to Exhibit 80, the areas that are shaded in orange, the IC  
4 exempt area. Do those appear to you to be the same areas  
5 of oil and gas pads.

6 A. They look very similar.

7 Q. If you'll look at the black and white version of  
8 the map which is what you gave us, it appears that  
9 everything is shaded in sort of the same color of gray.  
10 Do you agree with that?

11 MS. FREEL: Objection, form.

12 A. Okay.

13 Q. (BY MS. WHITTLE) And per your letter, this 2013  
14 letter is the basis for the Railroad Commission agreeing  
15 to change the post-mine land use for the entire Peeler  
16 Ranch from pastureland to industry commercial; is that  
17 correct?

18 MR. AXE: Objection, form.

19 A. I don't recall.

20 Q. (BY MS. WHITTLE) All right. I'd like to look at  
21 Exhibit 83, can you identify what this document is?

22 A. Looks to be an e-mail from Tim Walter to you.

23 Q. Are you copied on this e-mail?

24 A. Appears that I am.

25 Q. Can you read this e-mail, and let me know when



1       you're ready.

2                   MS. FREEL:   Which page are we reading first?

3                   MS. WHITTLE:   The first page.   You can read  
4       the whole thing.

5                   MS. FREEL:   What number is this one?

6                   MS. WHITTLE:   This is 83.   I skipped one.

7           A.    Okay.

8           Q.    (BY MS. WHITTLE)   So in this e-mail I asked  
9       Mr. Walter why the approved post-mine land use had been  
10      changed from pastureland to industrial commercial use.  
11      And his answer was what?

12                  MR. AXE:   Objection, form.

13           A.    He says that he's still researching it.

14           Q.    (BY MS. WHITTLE)   What else does he say?

15                  MS. FREEL:   Objection, form.

16                  MR. AXE:   Objection, form.

17           A.    Something is found to be amiss or potentially so,  
18      historically the division would historically dictate that  
19      and he would confer with other management and review team  
20      members, perhaps seek clarification of other documentation  
21      from the permittee.

22           Q.    (BY MS. WHITTLE)   What date was that exchange?

23           A.    Looks like April 10, 2018.

24           Q.    Did you discuss this matter with him?

25                  MS. FREEL:   Objection, form.

1 A. I don't recall whether we did or not.

2 Q. (BY MS. WHITTLE) Did you discuss this matter  
3 with anyone?

4 A. I don't recall whether I discussed it at all.

5 Q. And so did Mr. Walter -- was Mr. Walter someone  
6 you supervised?

7 A. At that time, yes.

8 Q. And what did he do under your supervision to look  
9 at this issue of when post-mine land use on the Peeler  
10 Ranch changed from pastureland to industrial commercial?

11 MR. AXE: Objection, form.

12 A. I don't know specifically what he looked at.

13 Q. (BY MS. WHITTLE) And did you ever follow-up with  
14 him to make sure he found an answer to that question from  
15 the landowner's representative?

16 MS. FREEL: Objection, form.

17 A. I don't recall.

18 Q. (BY MS. WHITTLE) Well, is this something you  
19 would have followed up on since it was a landowner  
20 concern?

21 A. I don't recall what happened with this.

22 Q. Is it a significant change for a post-mine land  
23 use to go from pastureland to industrial commercial?

24 MR. AXE: Objection, form.

25 MS. FREEL: Objection, form.

1 A. It didn't have to be.

2 Q. (BY MS. WHITTLE) For the landowner, and you may  
3 be aware of this, but Mr. Peeler is a rancher, a cattle  
4 rancher. He sells beef to HEB, all the restaurants in  
5 Austin that I've ever gone to.

6 MS. FREEL: Objection, to form. Move to  
7 strike. This is not a question, it's a narrative.

8 Q. (BY MS. WHITTLE) Mr. Wootton, are you aware of  
9 what the Peelers do for a living?

10 A. I'm aware they're ranchers.

11 Q. And do ranchers need pastureland?

12 MR. AXE: Objection, form.

13 A. I'm not a rancher.

14 Q. (BY MS. WHITTLE) Do ranchers need pastureland to  
15 graze their cattle?

16 MR. AXE: Objection, form.

17 A. I would assume.

18 Q. (BY MS. WHITTLE) And so by changing the  
19 post-mine land use of a ranch from pastureland to  
20 industrial commercial, does that have a significant impact  
21 on the landowner?

22 MS. FREEL: Objection, form.

23 MR. AXE: Objection, form.

24 A. A land use exchange is situational and oftentimes  
25 it's relative to the lease.

1 Q. (BY MS. WHITTLE) So where in the lease did it  
2 approve to change the post-mine land use from pastureland  
3 to industrial commercial?

4 MR. AXE: Objection, form.

5 A. I don't know.

6 Q. (BY MS. WHITTLE) So why did the Railroad  
7 Commission, while you were there and under your  
8 supervision, approve changing the post-mine last use from  
9 pastureland to industrial commercial on the Peeler Ranch?

10 A. I don't know specifics of that.

11 Q. Did any staff member at the time the change was  
12 made in the permit raise to you a concern that the letter  
13 we just went over didn't actually approve changing the  
14 post-mine land use from pastureland to industrial  
15 commercial?

16 MS. FREEL: Objection, form.

17 A. I don't recall.

18 Q. (BY MS. WHITTLE) You don't recall the  
19 conversation or you don't recall whether it happened?

20 A. I don't recall whether it even happened.

21 Q. So once the landowner raised this issue to the  
22 Railroad Commission and demonstrated that he had not, in  
23 fact, consented to the post-mine land use change, what did  
24 you and your staff do to remedy the situation?

25 MS. FREEL: Objection, form.

1 MR. AXE: Objection, form.

2 A. I don't recall the situation. What happened with  
3 it?

4 Q. (BY MS. WHITTLE) So you are not aware of any  
5 steps taken to remedy this situation?

6 MS. FREEL: Objection, form.

7 MR. AXE: Objection, form.

8 A. I don't recall what steps may or may not have  
9 been taken.

10 Q. (BY MS. WHITTLE) Okay. So when was permit -- if  
11 he says that permit 11 G was approved and issued in the  
12 fourth quarter 2013. Is that your recollection?

13 A. I don't recall exactly when it was issued.

14 Q. That is almost nine years or almost ten years  
15 after mining concluded on the Peeler Ranch. Is it unusual  
16 to change a post-mine land use approximately one decade  
17 after mining has finished on property?

18 MS. FREEL: Objection, form.

19 MR. AXE: Objection, form.

20 A. I would say land use changes occur at any point.  
21 Could potentially occur up to any point prior to bond  
22 release. It's very situational and specific.

23 Q. (BY MS. WHITTLE) And here the consultation  
24 letter that they provided to the Railroad Commission only  
25 approved those IC exempt areas, the oil and gas platforms,

1 correct?

2 MS. FREEL: Objection, form.

3 MR. AXE: Objection, form.

4 A. I don't know that for certain.

5 Q. (BY MS. WHITTLE) You don't read that letter as  
6 approving only the oil and gas production platforms and  
7 the access roads?

8 A. I read that letter. I don't know what other  
9 context there may be or what else may have been in that  
10 application.

11 Q. Well, you provided us the two letters that were  
12 the basis for the post-mine land use change and that's  
13 one.

14 MS. FREEL: Objection, form.

15 MR. AXE: Objection, form.

16 Q. (BY MS. WHITTLE) That that letter --

17 MS. WHITTLE: I haven't even asked my  
18 question.

19 MS. FREEL: That was my objection.

20 Q. (BY MS. WHITTLE) Does that letter meet -- is  
21 that letter the sum total of what the Railroad Commission  
22 has to offer on that subject?

23 MR. AXE: Objection, form.

24 MS. FREEL: Objection, form.

25 A. I don't know the answer to that.

1 Q. (BY MS. WHITTLE) But that's all your staff  
2 found, correct?

3 MR. AXE: Objection, form.

4 A. It would appear so.

5 Q. (BY MS. WHITTLE) Okay. I would like to show you  
6 what's been marked Exhibit 58.

7 A. Should I put this all back together?

8 Q. Yes, that's fine.

9 Can you identify for me what this document  
10 is?

11 A. This is a July 23, 2018 letter from myself to you  
12 regarding a complaint.

13 Q. Did you prepare this letter?

14 A. It appears that I did the cover letter.

15 Q. And so what is this letter about?

16 A. This is transmitting a copy of the inspection  
17 report that was conducted after a complaint was filed.

18 Q. What was the inspection concerning?

19 A. According to the letter it was regarding water  
20 discharging from -- water being discharged across Peeler  
21 property.

22 Q. What was the complaint from the landowner?

23 A. The letter is not specific. It says it's  
24 regarding the -- the task report -- it's not submitting  
25 the task report. Your complaint regarding discharging

1 water that was being held in the open mine pits across the  
2 Peeler Ranch and has flooded approximately 200 acres at  
3 the mine, could not be substantiated at this time.

4 Q. And so what was the date of this letter?

5 A. July 23, 2018.

6 Q. And do you know what date the inspection was?

7 A. According to the report it was June 29, 2018.

8 Q. And so why did the Railroad Commission respond to  
9 this concern?

10 MS. FREEL: Objection, form.

11 A. Why did -- why was -- I'm sorry?

12 Q. (BY MS. WHITTLE) Why did the Railroad Commission  
13 respond to this concern? Why did the Railroad Commission  
14 show up at the Peeler Ranch?

15 A. Because a complaint was filed by a landowner.

16 Q. Is the TPDES discharge permit within the purview  
17 of the Railroad Commission?

18 A. I don't believe in and of itself, no. It's part  
19 of the TCEQ.

20 Q. And so this letter stating that there was no  
21 violation of the TPDES permit parameters, why was this  
22 issued by the Railroad Commission?

23 A. Because the employment -- there are overlapping  
24 testing parameters that are described in San Miguel's  
25 permit that they are required to test for. And it appears



1     that the inspector evaluated the data that was available  
2     and took his own sample and they weren't -- they were  
3     determined under our rules to not be out of compliance  
4     with -- it's called mining regulations.

5           Q.   Okay.  I will show you Exhibit 87.  Keep that one  
6     out.  You look at it.  What is this?  Can you please  
7     identify this exhibit?

8           A.   Appears to be an e-mail sent from you the Denny  
9     Kingsley.

10          Q.   And who else?

11          A.   Copied are myself, Jack Simms and Scott  
12     Engelmann.

13          Q.   Did you review this e-mail when you received it?

14          A.   I don't -- I wouldn't couch it as review.  I'm  
15     certain I read it.

16          Q.   And so what -- what was relayed to you in this  
17     e-mail?

18          A.   Pictures and videos about wastewater discharge  
19     from a surface water control pond along the haul road.

20          Q.   And is this the complaint that you were -- the  
21     Railroad Commission responded to?

22                   MR. AXE:  Objection, form.

23          A.   I believe it is.

24          Q.   (BY MS. WHITTLE)  Okay.  Were you aware of other  
25     similar large discharges on or about July -- I'm sorry --

1 June 28, July 12th and August 13th in 2018?

2 MS. FREEL: Objection, form.

3 A. I don't recall whether I was aware of those or  
4 not.

5 Q. (BY MS. WHITTLE) Does the TPDES permit allow San  
6 Miguel to use private property for the conveyance of  
7 wastewater along a discharge route?

8 MS. FREEL: Objection, form.

9 A. I don't know what the TPDES allows.

10 Q. (BY MS. WHITTLE) All right. I would like to  
11 show you an exhibit what's been marked Exhibit 88. Do  
12 you -- do you recognize this area of the San Miguel mine?

13 A. In very general terms, yes.

14 Q. Is this a fair depiction of what the mine looks  
15 look from an aerial view?

16 MR. AXE: Objection, form.

17 A. I can't say for certain. I don't have that  
18 specific recollection.

19 Q. (BY MS. WHITTLE) But it looks familiar to you?

20 MR. AXE: Objection, form.

21 A. Again, in very general terms.

22 Q. (BY MS. WHITTLE) And so the discharge that was  
23 being complained about is from pond 7. Are you familiar  
24 with pond 7 on the -- I'm assuming the San Miguel lignite  
25 mine?

1 MR. AXE: Objection, form.

2 A. Somewhat, yes.

3 Q. (BY MS. WHITTLE) And we identified before that  
4 there are seeps from pond 7, pond 10, and pond 11 which  
5 are all identified on this map, correct?

6 MS. FREEL: Objection, form.

7 A. They seem to be on here, yes.

8 Q. (BY MS. WHITTLE) Okay. I would like to also  
9 show you what's been marked Exhibit 89. Have you ever  
10 seen these photographs?

11 A. I don't recall whether I've seen them or not.

12 Q. Well, these were taken on the same day that the  
13 inspectors were at the ranch. Do you see the area of  
14 discharge where the water is flowing on the Peeler  
15 Ranch --

16 MR. AXE: Objection, form.

17 Q. (BY MS. WHITTLE) -- in these photos?

18 MS. FREEL: Objection, form.

19 A. I can see where it's discharging. I don't know  
20 what the boundary is.

21 Q. (BY MS. WHITTLE) So your testimony is that you  
22 do not know whether the TPDES permit allows San Miguel to  
23 use private property for the conveyance of wastewater  
24 along the discharge route --

25 MS. FREEL: Objection, form.

1 Q. (BY MS. WHITTLE) -- is that correct?

2 A. Correct. I don't know what the TPDES permit  
3 requires.

4 Q. (BY MS. WHITTLE) Do you know how much wastewater  
5 was being discharged at a time during these discharge  
6 events in 2018?

7 A. No.

8 Q. Would it surprise you to know it was on the order  
9 of 70 million gallons of water?

10 MR. AXE: Objection, form.

11 MS. FREEL: Objection, form.

12 A. I can't make an educated guess on that whether  
13 that's correct or not.

14 Q. (BY MS. WHITTLE) Was that included in the  
15 investigation report how much wastewater was actually  
16 being discharged over the Peeler Ranch?

17 A. I don't know.

18 Q. Well, let's look at page 4 of the investigation  
19 report under comments. The second paragraph, the third  
20 line says, "Discharges from pond 7 appeared to have sheet  
21 flown to La Parita Creek fairly well as no active erosion  
22 was observed. Small areas of standing water and areas  
23 that had recently dried up were observed along the major  
24 flow routes beyond the permit boundary. However, this is  
25 not uncommon within close proximity of regional creeks."

1 Do the photographs that I just showed you  
2 indicate small areas of standing water?

3 MS. FREEL: Objection, form.

4 A. I didn't write this report. I don't know what he  
5 was referring to. It's his interpretation of small area  
6 of standing water.

7 Q. (BY MS. WHITTLE) Well, did you speak to your  
8 investigator?

9 A. I don't recall what conversations we had.

10 Q. Would you normally speak to your investigator  
11 reviewing his report that you send out to a landowner?

12 A. It would be not unheard of.

13 Q. So you don't recall whether you spoke to him,  
14 though?

15 A. Correct, I do not.

16 Q. But you were aware at the time that the Peelers  
17 were having growing concerns, correct?

18 MS. FREEL: Objection, form.

19 MR. AXE: Objection, form.

20 A. I recall that when we met with them, that they  
21 had voiced concerns, yes.

22 Q. (BY MS. WHITTLE) And you met with them prior to  
23 that wastewater discharge event in June, correct?

24 A. Yes.

25 Q. Because the letter we just went over was issued

1 in April, right?

2 A. Yes.

3 Q. How long did it take to gather the information to  
4 respond to the letter that you issued in April?

5 A. I don't recall.

6 Q. Was it several months?

7 A. I don't recall.

8 Q. Was it a week?

9 MS. FREEL: Objection, form.

10 A. I don't recall.

11 Q. (BY MS. WHITTLE) Okay. So if you'll recall, the  
12 letter stated that you were responding to a letter from  
13 February 2018. Does that sound right to you?

14 MR. AXE: Objection, form.

15 Q. (BY MS. WHITTLE) Does that jar your memory at  
16 all?

17 A. The April letter -- April 2 letter says that  
18 we're responding to a February 5, letter. February 9th  
19 letter, I apologize.

20 Q. So how long did it take you to gather up the  
21 information to respond to the February 9th letter?

22 A. I don't know.

23 Q. Well, was it gathered a long time before you sent  
24 the letter out?

25 A. That I don't know.

1 Q. Okay. So returning back to the inspection report  
2 where you stated that the Railroad Commission was not able  
3 to substantiate the Peeler's claims that the property had  
4 been flooded by the these discharges --

5 MS. FREEL: Objection, form.

6 MS. WHITTLE: I'm -- I'm referring back to  
7 the letter, Jennifer. Let me finish my question before  
8 you object.

9 Q. (BY MS. WHITTLE) Did you credit the Peeler's  
10 statements that the discharge is negatively impacting the  
11 soil and vegetation on their property?

12 MS. FREEL: Objection, form.

13 A. Which letter are you referring to?

14 Q. (BY MS. WHITTLE) So the July 23, 2018 letter  
15 that you sent. Would you like to review it again?

16 A. Reading this letter, the purpose of this letter  
17 was to provide a copy of the inspection report that  
18 documents the investigation conducted by the inspector.  
19 Beyond that, the inspector made -- made his findings in  
20 the inspection report.

21 Q. Do you back those findings?

22 A. My purpose was to provide the inspection report  
23 to the landowner or in this case to his counsel. In this  
24 case to his counsel.

25 Q. And in that -- in that letter you state that your

1 complaint regarding discharging water that was being held  
2 in the open mine pits across the Peeler Ranch and has  
3 flooded approximately 200 acres of the mine, could not be  
4 substantiated at this time.

5 That's what the letter states. And my  
6 question is: Did you credit the Peeler's statements that  
7 the discharge was negatively impacting the soil and  
8 vegetation on their property?

9 MS. FREEL: Objection, form.

10 MR. AXE: Objection, form.

11 A. I don't know what the inspector credited or did  
12 not as part of his investigation to determine whether  
13 there was a violation or not.

14 Q. (BY MS. WHITTLE) Well, so a landowner who's  
15 owned property for 100 years is telling you his ranch is  
16 flooded and that this is a new and unusual event. Why  
17 didn't you credit that?

18 MS. FREEL: Objection, form. Move to  
19 strike.

20 MR. AXE: Objection, form.

21 A. As I said before, I was not the inspector. It  
22 wasn't my -- I don't know. I don't know why he didn't.

23 Q. (BY MS. WHITTLE) Does the TPDES permit prohibit  
24 dilution to meet the limits for hazardous metals to inland  
25 waters of the state?



1 MR. AXE: Objection, form.

2 A. I don't know.

3 Q. (BY MS. WHITTLE) But this report purports to  
4 determine whether there was a violation of the TPDES  
5 permit, correct?

6 MS. FREEL: Objection, form.

7 MR. AXE: Objection, form.

8 A. It was responding to the complaint.

9 Q. (BY MS. WHITTLE) And it evaluates the parameters  
10 of the TPDES permit, correct?

11 A. I don't know exactly what the inspector  
12 evaluated. I transmitted a copy.

13 Q. Well, you just reviewed the inspection report,  
14 didn't you?

15 A. I signed off on it that it was in the proper  
16 form.

17 Q. Okay. Well, I would like you to read on page 4,  
18 the first paragraph, just that, does he evaluate the TPDES  
19 permit in his inspection?

20 A. It describes the -- the allowable daily maximums  
21 for grab sample values.

22 Q. In the TPDES permit, correct?

23 A. That's what he says.

24 Q. And so did he also look at whether or not the  
25 permit allows dilution to meet the limits for hazardous

1 metals to inland waters of the state?

2 MS. FREEL: Objection, form.

3 A. I don't know.

4 Q. (BY MS. WHITTLE) Does the TPDES permit  
5 incorporate limits for hazardous metals?

6 MR. AXE: Objection, form.

7 A. I don't know.

8 Q. (BY MS. WHITTLE) Did he evaluate the TPDES  
9 permit for hazardous metals?

10 MR. AXE: Objection, form.

11 MS. FREEL: Objection, form.

12 A. I don't know.

13 Q. (BY MS. WHITTLE) Is it your understanding that  
14 it is San Miguel's practice to mix wastewater with water  
15 from the Carrizo formation before discharging it?

16 A. I don't know exactly what they do to meet their  
17 discharge requirements.

18 Q. Does San Miguel monitor discharges at any outfall  
19 to demonstrate compliance with hazardous metal parameters?

20 A. I don't know what parameters they evaluate.

21 Q. Have you seen the Peeler's notices of violation  
22 under the Resource Conservation and Recovery Act, Clean  
23 Water Act, and Surface Mining Reclamation Act to San  
24 Miguel?

25 MS. FREEL: Objection, form.

1           A. I'm not certain I know which violations you're  
2 referring to.

3           Q. (BY MS. WHITTLE) Have you seen the notices of  
4 violation that the Peelers have sent to San Miguel? The  
5 Railroad Commission was provided copies.

6           MS. FREEL: Objection, form.

7           A. I don't recall if I've seen that or not.

8           Q. (BY MS. WHITTLE) Were you aware of those notices  
9 of violation?

10          A. I don't recall.

11          Q. Are you aware whether the Railroad Commission  
12 ever took action as a result of those notices of  
13 violation?

14          A. I don't know.

15                 MR. PREISTER: Counsel, I would like to take  
16 a break in the near future.

17                 MS. WHITTLE: Now is a good time.

18                 MR. PREISTER: Okay.

19                 VIDEOGRAPHER: We're going off the record at  
20 2:35 p.m.

21                 (Brief recess.)

22                 (Exhibit Nos. 90-96 were marked.)

23                 VIDEOGRAPHER: We're on the record at  
24 2:46 p.m.

25          Q. (BY MS. WHITTLE) Mr. Wootton, I'm going to hand

1 you what's been marked as Exhibit 90. Can you please  
2 identify that document?

3 A. Appears to be a response to a letter from the  
4 commission dated February 8, 2018.

5 Q. And what is this concerning? Feel free to take a  
6 moment to read it.

7 A. Okay.

8 Q. Have you seen this before?

9 A. I don't recall if I saw this previously or not.

10 Q. Let's skip forward a little bit to -- I'm going  
11 to the hand you what's been marked Exhibit 94. Can you  
12 identify this document for me?

13 A. This seems to be a report on the seep remediation  
14 plan.

15 Q. Is this signed by you?

16 A. Yes, it was.

17 Q. And what is the date?

18 A. July 13, 2018.

19 Q. And did you write this letter?

20 A. It was written by Dave Koran.

21 Q. The -- all of the letter or the comments that are  
22 attached?

23 A. He would have written everything for my review.

24 Q. And did you review it?

25 A. I looked it over.

1 Q. And so what does this July 13th letter respond  
2 to?

3 A. I believe you gave me an extra copy.

4 MS. FREEL: Oh, we need one over here.

5 A. I'm sorry. Could you repeat the question?

6 Q. (BY MS. WHITTLE) Yes. What does this July 13th  
7 letter refer to?

8 A. It refers to a 2017 area A seep remediation  
9 status report.

10 Q. And so what is the area A seep remediation  
11 project?

12 A. I don't recall exactly.

13 Q. Did you review the report?

14 A. No.

15 Q. Did you review the seep mitigation plan?

16 A. No.

17 Q. Have you ever reviewed any of the area A seep  
18 remediation reports submitted by San Miguel?

19 A. Not to my recollection.

20 Q. Are you aware that area A seep remediation plans  
21 have been submitted by San Miguel annually since 2008?

22 A. I don't have specific recollection on that.

23 Q. So the last line of this letter -- or of the  
24 first paragraph of this letter says, "This report of the  
25 ongoing investigations as presented is satisfactory

1 thorough and reasonable and we continue to appreciate the  
2 excellent effort made in your investigation to date."

3 What is the basis for the qualification that the  
4 investigation has been an excellent effort?

5 A. I don't know.

6 Q. Did you sponsor that language when you signed  
7 this?

8 A. This was written by the reviewer. I don't know  
9 why that language went in there.

10 Q. Well, since I think we've established that this  
11 investigation began in 2003 and it is ongoing, does that  
12 meet your standard of excellent effort?

13 MS. FREEL: Objection, form.

14 A. I can't answer that. I would have to speculate.  
15 I don't recall the specifics of this, either the timing or  
16 the content of what may have been submitted.

17 Q. (BY MS. WHITTLE) So how does your process work  
18 for signing a letter? What do you do before you sign a  
19 letter?

20 A. I generally -- not generally. I would read the  
21 letter. Look to see if anything looked out of line. If I  
22 had any questions I would discuss it with the staff member  
23 that prepared it and then I would either make corrections  
24 or I would sign it as is.

25 Q. And do you have any memory of letters that you

1 sign?

2 MS. FREEL: Objection, form.

3 A. Not when it's been over six months since I've  
4 been there and this has been almost a year, no.

5 Q. (BY MS. WHITTLE) So there are many things that  
6 you sign that you just don't have any recollection of?

7 MR. AXE: Objection, form.

8 MS. FREEL: Objection, form.

9 A. At this point today, that's correct.

10 Q. (BY MS. WHITTLE) Okay. Well, let's review these  
11 documents. I would also like to -- I'm going to compare a  
12 few things, show you Exhibit 92.

13 MS. FREEL: Which one was what number?

14 MS. WHITTLE: 92.

15 MS. FREEL: Thanks.

16 Q. (BY MS. WHITTLE) And then I'm going to hand you  
17 what's been marked Exhibit 93. Would you please review  
18 exhibit -- those two exhibits?

19 A. Okay.

20 Q. Okay. First I'd like to look at the e-mail from  
21 Tim Walter on February 13, 2018. Were you copied on this  
22 e-mail exchange?

23 A. Yes, it appears I was.

24 Q. Do you recall this e-mail exchange?

25 A. No.

1 Q. So in this e-mail exchange, the Railroad  
2 Commission is asking San Miguel for a --

3 A. Sorry.

4 Q. -- for a timeline for completion of steps to  
5 remediate the problems leading to the shallow groundwater  
6 flow in the area. And they state, "This was a carryover  
7 from our February 7, 2017 letter which remains without a  
8 response."

9 Do you know why the Railroad Commission was  
10 asking for a remediation plan for the area A seeps?

11 A. I don't know.

12 Q. Was Tom Walter someone that you supervised?

13 A. Yes.

14 Q. And so were you responsible for his work?

15 MS. FREEL: Objection, form.

16 A. I was responsible for oversight of his work.

17 Q. (BY MS. WHITTLE) Okay. But you don't recall  
18 this?

19 A. No, ma'am.

20 Q. Okay. So the area A seep remediation status  
21 report from January 9, 2018, did you ever review this  
22 status report?

23 A. Not to my recollection.

24 Q. And you're not aware of what investigation San  
25 Miguel has done regarding the area A seeps --



1 A. No, ma'am.

2 Q. -- is that correct?

3 And you don't know what remediation San  
4 Miguel has done over the years to address those seeps?

5 A. That's correct.

6 Q. And you don't know what it would take to  
7 remediate those seeps, I assume; is that correct?

8 A. I couldn't speculate.

9 Q. And did you review this letter from David Burris  
10 at the San Miguel Electric Cooperative providing a  
11 remediation plan?

12 A. This April 4th letter?

13 Q. Yes. This April 4th letter from Dave Burris, did  
14 you read this?

15 A. I don't recall whether I read it or not.

16 Q. Okay. So I'd like to look at the mitigation  
17 plan, which is on the second page of the letter. It's  
18 SMEC 00098534. I'm starting -- it says, "The proposed  
19 mitigation plan includes two elements. Reduction of the  
20 water levels in pond 7 and assessing and remediating the  
21 affected soils."

22 And under seep water reduction it says, "As  
23 discussed in the area A seep investigation report, the  
24 source of the seep water is likely from pond 7. SMECI  
25 will work towards lowering accumulated water levels in

1 pond 7 by implementing a program of systematic dewatering  
2 releases from the existing sedimentation ponds. Releases  
3 of the accumulated surface water stored within the area A  
4 will occur with via sedimentation ponds with associated  
5 TPDES permit outfalls."

6 And then if you go to the next paragraph, it  
7 says, "The volume of water stored in area A is  
8 substantial. Therefore, the anticipated timeline for  
9 accomplishing dewatering is on the order of 12 to  
10 18 months. Therefore, San Miguel plans to initiate  
11 discharge activities within 30 days of this letter."

12 So this letter was dated April 4, 2018. The  
13 wastewater discharges that we were just looking at were  
14 from June, July, and August 2018. Is it your  
15 understanding that the wastewater discharges that we were  
16 just reviewing are part of this systematic dewatering of  
17 area A that was part of this mitigation plan that you  
18 signed off on?

19 A. I don't know if they are or not.

20 Q. When the Peelers complained about the wastewater  
21 discharges that were flooding their property, did you or  
22 anyone at the Railroad Commission tell them that those  
23 discharges were part of this dewatering mitigation plan?

24 A. I don't recall specifically the conversation I  
25 had.

1 Q. Did the inspector or anyone at the Railroad  
2 Commission talk to you about how maybe those wastewater  
3 discharges were part of this area A dewatering plan?

4 A. Again, I don't have specific recollection of what  
5 may or may not have been discussed relative to those  
6 discharges or their relation to the -- the mitigation  
7 plan.

8 Q. Let's turn again to the letter of July 13, 2018  
9 that you wrote. And in it you -- you state, "Your plan as  
10 proposed," and I'm in the second paragraph. "Your plan as  
11 proposed consists of two phases, seep water reduction  
12 followed by soil assessment and remediation."

13 So at least when you signed this letter,  
14 were you aware that they were going to engage in seep  
15 water reduction followed by soil assessment and  
16 remediation?

17 A. I don't recall what I knew when I signed this  
18 letter.

19 Q. Well, if you turn to the next page, these are the  
20 comments that were provided by staff. Under seep water  
21 reduction plan, the third paragraph it states, "On  
22 June 18, 2018," which was approximately the time of the  
23 wastewater discharge that Mr. Peeler complained about,  
24 "SMRD inspector Jason Corley observed SMECI lowering the  
25 water level in pond 7 by pumping water to pond 10. SMECI

1 then pumps Carrizo formation groundwater into pond 7,  
2 blending this groundwater and remaining pond water until  
3 discharge standards are achieved. Then SMECI discharges  
4 pond 7 to La Parita Creek. According to Mr. Corley, this  
5 practice appears to be achieving the desired result of  
6 reducing the amount of water contributing to the area A  
7 seep. SMECI needs to indicate how this is a permanent  
8 solution to the issue."

9 So this letter that you sent appears to  
10 recognize that -- and this was right around the time of  
11 the wastewater discharges that the Peelers were  
12 complaining about, that those wastewater discharges were  
13 part of this area A seep remediation program. Did you  
14 ever recognize the connection between the two?

15 A. Personally, no. As I stated before, I was in a  
16 management role. I relied on competent, qualified staff  
17 to evaluate information and make recommendations.

18 Q. So when you sent the letter saying that staff  
19 could not corroborate the Peeler's concerns that their  
20 property was being flooded by these wastewater discharges,  
21 you didn't connect it with this letter approving this plan  
22 for discharging wastewater over the Peeler Ranch?

23 A. Again, it's been many months, I don't recall what  
24 connections may have been made or weren't.

25 Q. Do you make the connections now as we sit here?

1 Do you see how those two things might have been related?

2 A. I can't answer that because I don't have the  
3 totality of the permits and discussions with pertinent  
4 staff, I can't make that connection.

5 Q. Well, reviewing the two letters that you wrote,  
6 do you see that they might have been connected both in  
7 time and space, they were both at the same place?

8 MR. AXE: Objection, form.

9 MS. FREEL: Objection, form.

10 A. Again, I'd be speculating. They're the same -- I  
11 see common words.

12 Q. (BY MS. WHITTLE) I too, see common words.

13 MS. FREEL: Objection to the narrative.

14 Q. (BY MS. WHITTLE) All right. So Exhibit No. 91.  
15 I'm going to hand you that and ask you to identify it.  
16 Can you review that document and let me know when you're  
17 ready?

18 MS. FREEL: Can you remind me of that  
19 number?

20 MR. AXE: 91.

21 A. Okay.

22 Q. (BY MS. WHITTLE) Can you identify this exhibit?

23 A. It's an e-mail from Tim Walter to you regarding  
24 open records request.

25 Q. And are you copied on this e-mail?

1 A. It appears that I am.

2 Q. Do you recall this e-mail?

3 A. Not specifically, no.

4 Q. Do you see the date of the e-mail?

5 A. I do.

6 Q. So about this time you were talking about  
7 wastewater discharges at the Peeler Ranch in two different  
8 letters. And now you're copied on this open records  
9 request. So did you connect that the Peelers were having  
10 some concerns about their property?

11 A. I'm aware that the Peelers had concerns on their  
12 property. I can't say whether I connected the dots on  
13 this or not.

14 Q. Is it typical for staff to respond in substance  
15 to an open records request instead of just producing  
16 documents?

17 MR. AXE: Objection, form.

18 MS. FREEL: Objection, form.

19 A. I don't know.

20 Q. (BY MS. WHITTLE) Have you ever seen this where  
21 staff responds in substance to an open records request?

22 A. I don't recall whether I did or not.

23 Q. Okay. Well, let's look at number 2 on the first  
24 page of this document. It says, "As to the second  
25 bulleted item, you request documents concerning

1 investigations carried out by the Texas Railroad  
2 Commission concerning environmental conditions at the  
3 mine. This would be a null set as in my recollection  
4 during my 28 plus year tenure the commission does not  
5 carry out investigations but rather we request that the  
6 permittee investigate issues that arise. An issue is  
7 usually noted as a result of an inspection leading to --  
8 the division to direct the permittee to investigate the  
9 issue. Thus, if you wish to see how something of this  
10 sort arose, you would need to thumb through the monthly  
11 inspection report files which would be a time consuming  
12 and tedious process."

13 Is his description of investigations correct  
14 in your experience, does the Railroad Commission rely on  
15 the permittee to investigate issues that arose?

16 MS. FREEL: Objection, form.

17 A. I don't know how Mr. Walter came to write this in  
18 the manner he did. I would -- I don't believe that the  
19 commission would rely solely. I feel confident that they  
20 would ask for any pertinent data or seek clarification to  
21 get the whole picture. I don't know how -- I don't know  
22 how -- I don't know what was in his mind when he wrote  
23 this. I'm not saying it's wrong. I -- I just don't...

24 Q. (BY MS. WHITTLE) So do you agree with him or  
25 disagree?

1           A. I can't really say. I think each -- each  
2           situation would be unique. There may be times when --  
3           when it would be proper for the applicant to investigate  
4           why something was done or wasn't done. I'm not going to  
5           say it's right or wrong. It's situational.

6           Q. Can you give me an example of a time when the  
7           Railroad Commission conducted its own investigation? And  
8           it doesn't have to be at San Miguel, it can be anywhere.

9           A. I can't think of a specific example.

10          Q. So continuing on he says, "Just going on my own  
11          memory, the only environmental issue that has arisen --  
12          that has arisen concerns the saturation of the mines spoil  
13          in A area and it's causative effect on alkaline seeps in  
14          that area including ponds 10 and 11. These investigations  
15          are summarized in detail in Section .146 of the approved  
16          permit of which I believe you have already obtained a  
17          copy."

18                        So my first question about that is, you were  
19          copied on this along with having written the other  
20          letters. Do you still not recall this issue of the  
21          saturation of the mine spoil in area A?

22                        MR. AXE: Objection form.

23          A. I was not -- as I said before, I was not a  
24          specific reviewer. I don't have specific recollection of  
25          the details of the seep in area A.



1 Q. (BY MS. WHITTLE) Why were you copied on this  
2 e-mail, do you think?

3 MS. FREEL: Objection, form.

4 A. It was standard practice to copy one supervisor  
5 in the event a question arose or to keep them in the loop.

6 Q. (BY MS. WHITTLE) And so What was the purpose of  
7 keeping your supervisor in the loop?

8 A. I don't know where it originated. It was  
9 courtesy.

10 Q. And did you review for detail the documents that  
11 you were copied on by your staff?

12 MR. AXE: Objection, form.

13 A. Depends on the situation.

14 Q. (BY MS. WHITTLE) In this situation, did you  
15 review any of the matters relating to San Miguel or the  
16 Peeler Ranch for detail?

17 MS. FREEL: Objection, form.

18 A. Not that I recall.

19 Q. (BY MS. WHITTLE) I'm going to the hand you  
20 what's been marked Exhibit 95. Can you identify this  
21 document for me?

22 A. Appears to be the order of approval for the  
23 permit renewal. Let me see. I don't know exactly which  
24 number it is. Looks like the order approving the issuing  
25 permit 11 G.

1 Q. Where do you see 11 G?

2 A. That would be on the very last page, the second  
3 to last ordering paragraph, the very last page on the  
4 back, second to last ordering paragraph.

5 Q. Okay. So on the first page where it says,  
6 "Application for permit renewal revision permit No. 11 F"  
7 at the time that was the current permit number and at the  
8 end of the order it was now changed to 11 G; is that  
9 correct?

10 A. Yes, ma'am.

11 Q. Okay. And so were you part of this permit  
12 renewal revision?

13 A. I don't recall what role I made in this one.

14 Q. Okay. But are you generally familiar with these  
15 types of orders of approval for permit renewal revision?

16 A. Yes.

17 Q. Okay. I would like to look at page 5 through 7  
18 of this document. There's a table that lists each of the  
19 notification licenses or permits required. Is this --  
20 should -- should we be able to rely on this as an  
21 inclusive list of all of the notifications, licenses, or  
22 permits required for this mine?

23 MR. AXE: Objection, form.

24 MS. FREEL: Objection, form.

25 A. I don't know.

1 Q. (BY MS. WHITTLE) Well, is it supposed to include  
2 all of the notifications, licenses or permits required for  
3 the mine?

4 MR. AXE: Objection, form.

5 MS. FREEL: Objection, form.

6 A. I don't know what this table is intended to show.  
7 The order is prepared by an administrative law judge, not  
8 staff.

9 Q. (BY MS. WHITTLE) Okay. Does the staff review  
10 the order?

11 A. The staff looks it over for -- for any,  
12 potentially for errors and may or may not provide comments  
13 to the ALJ. But it's -- we have no control over the  
14 order.

15 Q. Where the order is being entered with staff  
16 approval and there isn't a contested case hearing, who  
17 provides the draft findings to the ALJ?

18 A. I don't know who provided these.

19 Q. So the Railroad Commission staff does not provide  
20 these findings to the ALJ?

21 MR. AXE: Objection, form.

22 MS. FREEL: Objection, form.

23 A. Well, Railroad Commission staff -- are you  
24 talking surface mining staff?

25 Q. (BY MS. WHITTLE) Yes, does surface mining

1 reclamation staff help in the preparation of this order?

2 A. Not to my experience.

3 Q. And so how does the ALJ come to make all these  
4 findings where there hasn't been a contested case hearing?

5 A. I believe, I'm not in their shoes, I believe they  
6 use the technical analysis that is prepared by the staff  
7 and filed with the ALJ documenting staff's recommendations  
8 on approval or denial and then the -- the findings are  
9 based on that information.

10 Q. So the table we just looked at, do you -- in your  
11 experience, would that have come from the technical  
12 documents prepared by the staff?

13 MR. AXE: Objection, form.

14 A. I don't know the -- I don't know what the ALJ  
15 used to generate this table.

16 Q. (BY MS. WHITTLE) Okay. So when you say you're  
17 generally familiar with this document, what do you mean by  
18 that?

19 A. I mean, I've seen a number of them over the  
20 years.

21 Q. Okay. Well, we'll set that aside. All right.  
22 Now I'm going to hand you what's been marked Exhibit 96.  
23 Have you seen these documents before?

24 A. Have I seen these documents?

25 Q. Yes.

1 A. Yes.

2 Q. What are they?

3 A. They're personnel action -- well, clarify. I  
4 don't believe I saw the top page. That was done after my  
5 separation. But I believe I've seen the others.

6 Q. Well, let's start at the last document in this  
7 packet that is dated November 26, 2018. Can you identify  
8 that document?

9 A. It's a separation agreement and release.

10 Q. And what does it state?

11 A. It states that in summary that I chose to resign  
12 in lieu of termination.

13 Q. And why did you choose to resign your position at  
14 the Railroad Commission?

15 A. I was eligible to retire.

16 Q. And what did that grant you in terms of benefits  
17 by retiring?

18 A. My pension.

19 Q. And was that part of a settlement agreement with  
20 the Railroad Commission?

21 A. I don't recall whether it was part of a  
22 settlement agreement or not. There was not a suit, if  
23 that's what you mean.

24 Q. How were you offered the ability to resign in  
25 lieu of termination?

1 A. The option was presented to me.

2 Q. Who offered you that?

3 A. The HR director, the general counsel.

4 Q. And can we turn to the next page, which is --  
5 starts -- it's to you from the executive director. Can  
6 you identify this document for me?

7 A. This is the November 26th?

8 Q. Yes.

9 A. Yes, that's my resignation letter.

10 Q. What is the subject of that memorandum?

11 A. Resignation of employment.

12 Q. Okay. If you turn to the next page. Have you  
13 seen this document?

14 A. Yes.

15 Q. When did -- when were you presented this  
16 document?

17 A. In the meeting that I had with the HR director.  
18 I believe it was -- well, it's November 26, 2018.

19 Q. And what led to this memorandum with the  
20 termination of employment?

21 A. I'm sorry?

22 Q. What led to the Railroad Commission determining  
23 you should be terminated?

24 A. I don't know for certain.

25 Q. Were you aware of any investigation?

1           A. I was aware of an investigation. I didn't know  
2 it was involving me per se.

3           Q. Were you aware of an investigation into Denny  
4 Kingsley, the director?

5           A. I don't know what was involved. I don't know who  
6 was involved.

7           Q. Well, this memorandum states that there were --  
8 there was a complaint received by an employee in the  
9 Surface Mining Reclamation Division. Did you -- were you  
10 aware of that complaint?

11          A. Yes.

12          Q. Do you know who made the complaint?

13          A. I do not.

14          Q. Do you know what the complaint was?

15          A. I really don't. I'm -- I'm still unclear as to  
16 what the specific complaint was.

17          Q. And so what did HR tell you about the  
18 investigation and the results of the investigation?

19                 MS. FREEL: Objection, form.

20          A. They asked -- I don't recall what the questions,  
21 but they asked questions as part of the investigation. I  
22 heard nothing more until this happened on November 26th.

23          Q. (BY MS. WHITTLE) And how did you feel when you  
24 got that?

25          A. It wasn't great.

1 Q. Were you surprised?

2 A. I believe so.

3 Q. Did Mr. Kingsley receive his termination  
4 memorandum on the same day?

5 A. I -- I don't know for certain.

6 Q. How was this presented to you? Were you called  
7 in to HR?

8 A. Yes.

9 Q. So the memorandum says that, "HR investigated --  
10 conducted interviews with SMRD staff. And that staff  
11 members feared retaliation or were concerned that the  
12 retaliatory or negative treatment that has already  
13 occurred because they voiced professional opinions that  
14 appear to be adverse to industry." Was there any basis  
15 for that allegation?

16 A. For myself, I don't believe so.

17 Q. Do you have any understanding of who might have  
18 thought you were taking retaliatory action against them?

19 A. No.

20 Q. Do you know what those retaliatory actions might  
21 have been?

22 A. Other than what's described in this memo, I don't  
23 know.

24 Q. The second states, Staff members otherwise do not  
25 feel comfortable expressing professional opinions and/or



1 are anxious about or unsure how to perform their jobs."

2 Do you believe there's any basis for that statement?

3 A. With respect to myself is the only one I can  
4 speak of, I disagree.

5 Q. And for number 3 it says, "Staff believe there's  
6 a lack of communication and lack of leadership from the  
7 assistant director and the director of SMRD." Do you  
8 believe there's any basis for that statement?

9 A. Again, speaking for myself, I disagree with it.

10 Q. And so why do you think you were fired?

11 A. I don't know.

12 Q. Did you ask?

13 A. Did I what?

14 Q. Did you ask?

15 A. I was presented with the information in this  
16 memo.

17 Q. Did you discuss it with Denny Kingsley?

18 A. No.

19 Q. Was he terminated around the same period of time?

20 MR. AXE: Objection, form.

21 A. He left the agency. I don't know whether -- I  
22 don't know the circumstances with his departure.

23 Q. (BY MS. WHITTLE) The memorandum also says that,  
24 "Human resources and the office of general counsel agree  
25 that Travis Wootton, SMRD assistant director attempted

1 retaliatory action against the complainant and employees  
2 in SMRD who participated in this review during the  
3 review." Is there any basis for that statement?

4 A. I believe it's a misunderstanding. I don't  
5 believe it's -- I don't believe there's basis for it, is  
6 my opinion.

7 Q. And so what do you think the misunderstanding is?

8 A. I can't really quantify. I -- I just -- I  
9 don't -- I beg to differ, respectfully, I beg the differ  
10 with the findings in this memo.

11 Q. Well, this memorandum says that you were told  
12 that any staff reorganizations needed to be approved by  
13 human resources but that you removed two employees from  
14 their team in the applications and permit management.

15 Did that happen or is that what you think is  
16 a misunderstanding?

17 MS. FREEL: Objection, form.

18 A. That did not happen.

19 Q. (BY MS. WHITTLE) Okay.

20 A. There was discussion about options, but it never  
21 happened.

22 Q. And so did you tell HR and the office of general  
23 counsel that they were mistaken about what occurred?

24 A. I voiced the opinion at my exit interview, or  
25 whatever you want to call it, that I didn't believe it was

1 correct. But perception is -- perception is perception.

2 Q. Well, had they interviewed you prior to your  
3 receiving this memorandum?

4 A. Did they?

5 Q. Yes.

6 A. Not beyond the interview that I had with the  
7 initial investigation. The part where it got to that  
8 there was perceived retaliation following the discussion  
9 we had at that point, no.

10 Q. And the initial discussion, was that an  
11 investigation into you or something else?

12 A. I don't recall it being made clear as to who  
13 specifically the investigation was made into.

14 Q. So it states that you informed management in that  
15 October 10 meeting that they were not allowed to speak  
16 negatively to anyone about the change you were making.  
17 Is -- do you disagree with that statement?

18 A. I believe that statement was taken out of  
19 context. I said something to the effect -- again, that  
20 change never did occur. It was a brainstorming session  
21 about how to address a staffing shortfall in another  
22 group. I was attempting to encourage managers to be sure  
23 that we go about everything that we do, as I did on a  
24 regular basis, to be positive and present a team approach  
25 in a unified approach. Never was its intended to be

1 discrimination -- to be discriminatory or retaliatory or  
2 taken in an -- in an improper or negative light  
3 whatsoever. That's where I believe there's a  
4 misunderstanding.

5 Q. Would you consider yourself friends with anyone  
6 who works for San Miguel Electric Cooperative?

7 MS. FREEL: Objection, form.

8 A. I would consider myself to be friendly. No one  
9 is personal friends that I go to dinner -- that I call and  
10 hang out with. I'm friendly -- I was friendly and  
11 professional with them. I've not spoken with them, to my  
12 recollection, since I was employed at the agency.

13 Q. (BY MS. WHITTLE) Do you consider yourself  
14 friends with anyone who worked at Kiewit Mining Group?

15 MR. AXE: Objection, form.

16 A. I would give the same answer for that. No.

17 Q. (BY MS. WHITTLE) Would you consider yourself  
18 friends with anyone who works for South Texas Electric  
19 Cooperative?

20 MS. FREEL: Objection, form.

21 A. No.

22 Q. (BY MS. WHITTLE) Would you consider yourself  
23 friends with anyone in the Peeler family?

24 MS. FREEL: Objection, form.

25 A. No.

1 Q. (BY MS. WHITTLE) Does Mr. Kingsley know that you  
2 are being deposed today?

3 A. I don't know.

4 Q. Does anyone from San Miguel know that you are  
5 being deposed today because of communications you have had  
6 with them?

7 A. No.

8 Q. Did you ever go to social gatherings with anyone  
9 from San Miguel or Kiewit Mining Group or South Texas  
10 Electric Cooperative?

11 MS. FREEL: Objection, form.

12 A. Only at a -- a TMCA meeting after the fact where  
13 everybody, any staff that was there, anybody else that was  
14 there. But not purposely just let's go out.

15 Q. (BY MS. WHITTLE) Can you identify what TMCA is?

16 A. Texas Mining Reclamation Association.

17 Q. And is that an industry group?

18 A. It's -- in effect our staff they put on workshops  
19 and things that our staff sometimes go to.

20 Q. Did TMCA pay for your activities at those events?

21 A. No.

22 Q. Did you ever accept a gift from anyone at San  
23 Miguel?

24 A. No.

25 Q. Did you ever accept a gift from anyone at Kiewit

1 Mining Group?

2 A. No.

3 Q. Did you ever accept a gift from anyone at South  
4 Texas Electric Cooperative?

5 A. No.

6 Q. Did you ever go on vacations with anyone from San  
7 Miguel Electric Cooperative?

8 A. No.

9 Q. Did you ever go on vacations with anyone from  
10 Kiewit Mining Group?

11 A. No.

12 Q. Did you ever go on vacation with anyone from  
13 South Texas Electric Cooperative?

14 A. No.

15 Q. Did you ever know anyone from the Railroad  
16 Commission who accepted vacations from someone in the  
17 mining industry?

18 A. I'm not aware of anything like that happening.

19 Q. So I think you answered this, but did you ever  
20 attend conferences with representatives from San Miguel,  
21 Kiewit or South Texas?

22 A. Yes.

23 Q. Did you have drinks together?

24 MS. FREEL: Objection, form.

25 A. I can't recall.

1 Q. (BY MS. WHITTLE) Did you have meals together?

2 A. I can't recall.

3 Q. Do you know of anyone at the Railroad Commission  
4 who has ever accepted a gift from San Miguel Electric  
5 Cooperative?

6 A. I don't know.

7 Q. Do you know of anyone at the Railroad Commission  
8 who's accepted a gift from Kiewit Mining Group?

9 A. I don't know.

10 Q. Do you know of anyone at the Railroad Commission  
11 who's ever accepted a gift from South Texas Electric  
12 Cooperative?

13 A. I don't know.

14 Q. Did anyone from those three entities, San Miguel,  
15 Kiewit, or South Texas, give any of your family members  
16 gifts?

17 A. No.

18 Q. Did anyone from those three entities ever pay for  
19 your family member's vacations?

20 A. No.

21 Q. Did anyone from any of those three entities pay  
22 for any educational benefit for you or your family  
23 members?

24 A. No.

25 Q. Do you know if Denny Kingsley is friends with

1 anyone from San Miguel?

2 A. I don't know.

3 Q. Were you aware that he golfs with Joe Harris, for  
4 example?

5 A. Well, I guess I had heard that. I don't know  
6 how -- I don't know what the status of their friendship  
7 is, though.

8 Q. Do you know if anyone -- if Denny Kingsley is  
9 friends with anyone from Kiewit Mining Group or STEC?

10 A. I don't know who he's friends with.

11 Q. Did Denny Kingsley ever go on vacation with  
12 anyone from industry groups?

13 A. I don't know that.

14 Q. Why did employees of the Railroad Commission  
15 allege that you were more favorable to industry?

16 A. I don't have no idea.

17 MR. AXE: Objection, form.

18 MS. FREEL: Objection, form.

19 A. Sorry. I have no idea.

20 Q. (BY MS. WHITTLE) Were you more favorable to  
21 industry?

22 MR. AXE: Objection, form.

23 A. In my opinion, no.

24 Q. (BY MS. WHITTLE) Did you give more favorable  
25 treatment to industry over landowners?



1 A. Absolutely not.

2 Q. How is your firing impacted your family?

3 MS. FREEL: Objection, form.

4 MR. AXE: Objection, form.

5 A. I have more time to do things at the house and  
6 cook dinner for my wife every night.

7 Q. (BY MS. WHITTLE) Were you planing to retire this  
8 early?

9 A. I don't know.

10 Q. Has it been difficult finding new employment or  
11 have you not bothered?

12 MS. FREEL: Objection, form.

13 A. I really haven't even tried yet.

14 Q. (BY MS. WHITTLE) Do you miss your job at the  
15 Surface Mining Reclamation Division?

16 A. I miss the challenge of working with landowners  
17 and the industry. I miss the people I worked with.

18 Q. Why do you think the executive director made the  
19 decision to terminate your employment?

20 A. I don't know.

21 MR. AXE: Objection, form.

22 A. I don't know.

23 Q. (BY MS. WHITTLE) In your view, did they make a  
24 mistake?

25 MS. FREEL: Objection, form.

1           A. I can't really answer that because I'm not in his  
2 head.

3           Q. (BY MS. WHITTLE) Are you still friends with  
4 staff at the Railroad Commission?

5           A. I've not had a lot of contact.

6           Q. Is there anyone you stay in touch with?

7           A. Occasionally.

8           Q. Okay. That's all my questions. I apologize for  
9 the difficulty of those questions at the end.

10          A. It is what it is. You're doing your job.

11                   MS. FREEL: San Miguel has no questions for  
12 this witness.

13                   MR. AXE: Kiewit has no questions.

14                   MR. SOMMER: South Texas Electric  
15 Cooperative will reserve its questions until the time of  
16 trial.

17                   MS. FREEL: Reserve for trial.

18                   MR. AXE: Same with Kiewit.

19                   MS. WHITTLE: Thank you, Mr. Wootton.

20          A. Yes, ma'am.

21                   VIDEOGRAPHER: This concludes today's  
22 deposition. We're going off the record at 3:35 p.m.

23                           (Proceedings concluded at 3:35 p.m.)  
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SIGNATURE PAGE

I, TRAVIS WOOTTON, have read the foregoing deposition and hereby affix my signature that same is true and correct, except as noted on the correction page.

\_\_\_\_\_  
TRAVIS WOOTTON

THE STATE OF TEXAS            )  
COUNTY OF \_\_\_\_\_ )

Before me \_\_\_\_\_ on this day personally appeared \_\_\_\_\_ known to me [or proved to me on the oath of \_\_\_\_\_ or through \_\_\_\_\_ (description of identity card or other document)] to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he/she executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

\_\_\_\_\_  
NOTARY PUBLIC IN AND FOR  
THE STATE OF T E X A S

My Commission Expires:  
\_\_\_\_\_

Job No. 3310750

1 CAUSE NO. 18-08-0777-CVA  
2 SAN MIGUEL ELECTRIC ) IN THE DISTRICT COURT OF  
COOPERATIVE, INC., )  
3 )  
Plaintiffs )  
4 ) ATA COUNTY, TEXAS  
VS. )  
5 )  
A.M. PEELER RANCH, LLC, )  
6 ALONZO M. PEELER, JR.; ) 218TH JUDICIAL DISTRICT  
AND BARBARA GENE PEELER  
7  
Defendants  
8  


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9 A.M. PEELER RANCH, LLC;  
ALONZO M. PEELER, JR.;  
10 and BARBARA GENE PEELER,  
Counter-Plaintiffs  
11 VS.  
AECOM; BRAZOS ELECTRIC  
12 POWER COOPERATIVE, INC.;  
Kiewit Mining Group,  
13 INC.; THE NORTH AMERICAN  
COAL CORPORATION; SAN  
14 MIGUEL ELECTRIC  
COOPERATIVE, INC.; and  
15 SOUTH TEXAS ELECTRIC  
COOPERATIVE, INC.,  
16 Counter-Defendants  


---

17  
JASON PEELER,  
18 Intervenor  
VS.  
19 AECOM; BRAZOS ELECTRIC  
POWER COOPERATIVE, INC.;  
20 Kiewit Mining Group INC.,  
THE NORTH AMERICAN COAL  
21 CORPORATION; SAN MIGUEL  
ELECTRIC COOPERATIVE,  
22 INC.; AND SOUTH TEXAS  
ELECTRIC COOPERATIVE,  
23 INC.,  
Counter-Defendants  
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REPORTER'S CERTIFICATION  
DEPOSITION OF TRAVIS WOOTTON  
TAKEN MAY 13, 2019

I, JANALYN ELKINS, Certified Shorthand Reporter in  
and for the State of Texas, hereby certify to the  
following:

That the witness, TRAVIS WOOTTON, was duly sworn by  
the officer and that the transcript of the oral deposition  
is a true record of the testimony given by the witness;

That the deposition transcript was submitted on  
June 3, 2019 to the witness or to the attorney for  
the witness for examination, signature and return to  
VERITEXT, by June 26, 2019;

That the amount of time used by each party at the  
deposition is as follows:

MARY WHITTLE - 4 hours 18 minutes

That pursuant to information given to the deposition  
officer at the time said testimony was taken, the  
following includes counsel for all parties of record:

MARY WHITTLE - ATTORNEY FOR PLAINTIFF

MS. JENNIFER FREEL - ATTORNEY FOR SAN MIGUEL ELECTRIC

RICHARD H. SOMMER - ATTORNEY FOR SOUTH TEXAS ELECTRIC

MR. ALBERT AXE - ATTORNEY FOR KEIWIT

MR. DAVID PREISTER - ATTORNEY FOR WITNESS

I further certify that I am neither counsel for, related to, nor employed by any of the parties in the action in which this proceeding was taken, and further that I am not financially or otherwise interested in the outcome of the action.

Further certification requirements pursuant to Rule 203 of TRCP will be certified to after they have occurred.  
Certified to by me this 30th day of May 2019.



JANALYN ELKINS

Texas CSR 3631

Expiration Date 12/31/2018

Veritext Legal Solutions

300 Throckmorton Street, Suite 1600

Fort Worth, Texas 76102

Firm Registration No. 571

PH: (817) 336-3042

FURTHER CERTIFICATION UNDER RULE 203 TRCP

The original deposition was/was not returned to the deposition officer on \_\_\_\_\_;

If returned, the attached Changes and Signature page contains any changes and the reasons therefor;

If returned, the original deposition was delivered to MARY WHITTLE, Custodial Attorney;

That \$ \_\_\_\_\_ is the deposition officer's charges to Plaintiff for preparing the original deposition transcript and any copies of exhibits;

That the deposition was delivered in accordance with Rule 203.3 and that a copy of this certificate was served on all parties shown herein and filed with the Clerk.

Certified to by me this \_\_\_\_\_ day of \_\_\_\_\_, 2019.



JANALYN ELKINS

Texas CSR 3631

Expiration Date 12/31/2018

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Job No. 3310750

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**[300 - acid]**

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**[determination - documentation]**

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**[management - mine]**

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**[permit - pond]**

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**[pond - property]**

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**[property - railroad]**

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**[railroad - reclamation]**

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**[reclamation - renewals]**

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**[reopen - retaliatory]**

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